A

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AND

CRITICAL REVIEW

OF THE

STATE TRIALS.

Wherein are inſerted,

Several TRIALS not in any other Collection.

ALSO,

Some TRIALS that were taken in Haſte and ſcarce Intelligible, are brought into Regular ORDER; and many Deficiencies throughout the Whole ſupply'd.

LIKEWISE,

REMARKS are made on each TRIAL, ſhewing what the Law in Criminal Caſes anciently was; how it has been altered, and ſtands at this Day. Together with impartial MEMOIRS of the Times and Characters of the SUFFERERS.

To which is added,

A Compleat ALPHABETICAL INDEX, of the Names of the Priſoners tried, the Times when, their Crimes, and their Puniſhment.

By Mr. *SALMON.*

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A CRITICAL REVIEW OF THE STATE TRIALS.

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The Trial of TITUS OATES, for Perjury, in the Court of *King's-Bench*, on the 8th of *May* 1685. 1 *Jac.* II.

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Oates's first Trial for Perjury.

His Challenges.

THE Defendant was permitted to ſit within the Bar, that he might the more conveniently order his Papers, and manage his Defence. The Jurors being called, he challenged ſome of them, becauſe they had been upon the Grand Jury, and found the Bill againſt him; which was allowed to be a good Cauſe of Challenge.

The Names of the twelve that were ſworn, were,

The Jury.

Sir *William Dodſon*,	*Robert Beding field*,
Sir *Edmund Wiſeman*,	*Thomas Rawlinſon*,
Richard Aley,	*Roger Reeves*,
Thomas Fowlis,	*Ambroſe Iſted*,
Thomas Blackmore,	*Henry Collier*, and
Peter Pickering,	*Richard Howard.*

The Indictment.

The Indictment charged the Defendant with artful and corrupt Perjury, in that he had, on the 17th of *December* 1678, ſworn, there was a treaſonable Conſult of Jeſuits held at the *White-horſe* Tavern in the *Strand*, in the County of *Middleſex*, the 24th of *April* in the ſaid Year 1678, at which the Jeſuits *Whitebread*, *Fenwick*, and *Ireland*, the ſaid *Titus Oates*, and forty or fifty more Jeſuits, were preſent; and that they ſeparated themſelves into ſeveral Companies, or Clubs, and came to a Reſolution to murder the King: And that he, the ſaid *Titus Oates*, carried the ſaid Reſolution from Chamber to Chamber to be ſigned by the ſaid Jeſuits; whereas in Truth and Fact, he, the ſaid *Titus Oates*, was not preſent at any ſuch Conſult on the 24th of *April* 1678, nor carried any ſuch Reſolution from Chamber to Chamber to be ſigned: And ſo the ſaid *Titus Oates*, on the ſaid 17th of *December* 1678, did commit wilful and corrupt Perjury.

The King's Counſel, having opened the Indictment, proceeded to produce their Evidence: And firſt the Record of *Ireland*'s Conviction was read; then Mr. *Foſter* was ſworn, and gave the following Teſtimony, *(viz.)*

Foſter's Evidence.

I was ſo unhappy to be on that Jury by whom Mr. *Ireland*, *Pickering*, and *Grove*, were tried in *December* 78. I ſaw Mr. *Oates* ſworn as an Evidence for the King; and he depoſed, That there was a Meeting of ſeveral Jeſuits at the *White-horſe* Tavern in the *Strand*, upon the 24th of *April* 1678; and that Mr. *Ireland*, *Whitebread*, and *Fenwick*, were preſent at the Meeting, and that there they did conſult the Death of the King, and the altering of Religion; and ſome went, and others came. At laſt they reduced themſelves into ſeveral ſmaller Companies or Clubs, and came to a Reſolution, that *Pickering* and *Grove* ſhould aſſaſſinate the King; for which the one was to have 1500 Pounds and the other 30,000 Maſſes ſaid for him; and that this Reſolution was drawn up by one *Mico*, and he *(Oates)* himſelf, went with it to ſeveral of their Chambers: He went to *Whitebread*'s Chamber, and ſaw *Whitebread* ſign it: He went to *Fenwick*'s Chamber, and ſaw *Fenwick* ſign it; and went to *Ireland*'s Chamber, and ſaw *Ireland* ſign it, upon the 24th of *April*, 78, I am poſitive in this, becauſe I took Notes at the Trial, being a Juryman; and afterwards compared them with the Trial, and found they agreed; and I have kept theſe Notes by me ever ſince.

Oates demanded, if he ſwore they reſolved to kill the King, at the *White-horſe* Tavern, or that Reſolution was made after they ſeparated into leſſer Clubs: Mr. *Foſter* anſwered, They came to a Reſolution, you ſaid, at the *White-horſe* Tavern; and it was there drawn up by one *Mico*, I think; and it was carried by you for every one to ſign it from Chamber to Chamber; for, I remember, you were asked the Queſtion, Whether you ſaw them ſign it? And you anſwered, That you did carry it, and ſaw them ſign it.

Oates demanded, how he came to remember all this after ſo long Time: Mr. *Foſter* anſwered, Truly it is ſo long ago, that had I not taken theſe Notes at the Trial, I had not been able to give ſo good an Account.

Then

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St. Omers *Students their Evidence.*

Then about twenty Gentlemen, who were Students at the *Engliſh* College at St. *Omers*, when Mr. *Oates* was a Student there, depoſed That they were ſure he was at the ſaid College from *Chriſtmas* to *June* 1678, and was not abſent from the College during that Time, unleſs a Day or two in *January*, when he went to *Watton*, a Town in that Neighbourhood: And theſe Witneſſes mentioned ſuch Circumſtances to confirm their Teſtimony, as ſhewed they could not eaſily be miſtaken; as that Mr. *Oates* always dined at a Table by himſelf in the College-hall; for, being a Man in Years, he pretended he could not eat as the young Students did, and therefore ſat at a little Table by himſelf, next to the Table of the Fathers, to which all the Students made their Reverence before they ſat down. Others depoſed he was appointed Reader in the Sodality, and that he read there at the ſame Time he had ſworn he was in *London*, except a few Days he was in the Infirmary. Others remembred he was at St. *Omers* at that Time, by his being with them at certain Sports and Recreations they uſed then; and ſeveral more by other Circumſtances. And when the printed Trial of the Jeſuits was brought over to St. *Omers*, they were amazed to find *Oates* ſwear he was at a Conſult at *London* the 24th of *April*, when the whole College knew he was at St. *Omers*. *Hagherſtone* depoſed, That there was, indeed, a Congregation of the Jeſuits held in *London* in *April* 78, as was uſual, once in three Years, to chuſe a Procurator, and other Buſineſs relating to the Society: And that he ſaw two of the Fathers go from St. *Omers* to that Congregation; but he remembred very well that *Oates* remained there then, for he frequented his Company all that time; and when the Fathers, *viz.* Mr. *Williams* and Mr. *Marſh*, returned to St. *Omers*, the Defendant, *Oates*, asked this Witneſs, if they had been at the Conſult? Others depoſed, That *Oates* was ſo remarkable for his Stories and ridiculous Actions, and quarrelling with every Body in the College, that if he had been out of the College ſo long as to go to *London*, and back again, every body muſt have miſſed him.

The Lord *Gerrard*, who was a Student at St. *Omers* when the Defendant was there, depoſed, That *Oates* came to St *Omers* in *December* 77, and he never heard he was abſent till *June* 78, and that he remembred him particularly the 25th of *March* 78, when Mr. *Oates* deſired to be appointed Reader to the Sodality, and that he was conſtant in his reading on Sundays and Holidays for five or ſix Weeks: That he remembred his being confirmed by a Catholick Biſhop, who was there on St *Auſtin*'s Day, the 26th of *May*, N. S. That when the News of the Plot's being diſcovered came to St. *Omers*, it was wondered at by all the Scholars, how *Oates* could be ſo impudent to pretend he was at ſuch a Conſult the 24th of *April* 78, when all the College ſaw him every Day in *April* and *May* at St. *Omers*, as much as a Man could be ſeen in a Family; and that no Scholar came or went away but it was the common News of the Houſe.

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Mr. *Samuel Morgan*, a beneficed Clergyman of the Church of *England*, depoſed, that he was a Student at St. *Omers* in the Year 78, and had been five Years reconciled to the Church of *England:* That he remembered *Oates* came to St. *Omers* about a Fortnight before *Chriſtmas* 77, and went away in *June* 78, and did not remember he was abſent during that Time, except one Night at *Watton:* That *Ireland*'s Trial being brought to the College, wherein it was ſaid, Mr. *Oates* had ſworn the 24th of *April* 78, he was at a Conſult of the Jeſuits at the *White-horſe* Tavern, where they reſolved to kill the king; having it then freſh in his Memory, he found *Oates* was at St. *Omers* that very Day, by a particular Circumſtance; for he was playing at Ball that Day, and ſtruck the Ball over into a Court, and borrowed Mr. *Oates*'s Key to fetch it.

Oates's Defence.

The Court directing Mr. *Oates* to enter upon his Defence, he objected to the Indictment, that the Aſſignment of the Perjury did not purſue the Oath, as it was ſet forth; for in the one Place the Word was *ſignand'*, and in the other *ſignat'*; and if it were *ſignat'* in the Evidence that was given, it ought to be *ſignat'* in the Perjury aſſigned. The Court told him that they were then upon the Fact, and that this Objection would be ſaved to him if he were convicted, but it was not proper now. Beſides, he ſhould remember, there were two Perjuries aſſigned; the one upon the firſt Part of his Oath, *viz.* That he was preſent at a Conſult the 24th of *April* 78, *Ubi re vera*, he was not there; and if he were forſworn in that Point, it would eaſily be believed he was forſworn in the other Point, *viz.* That he did not carry the Reſolution from Chamber to Chamber, *&c.*

In the next Place, he deſired the Opinion of the Court, Whether the Evidence did prove the Words he was ſaid to ſwear, as they were laid in the Indictment?

The Court anſwered, they thought them fully proved; but that was a Point of Fact which the Jury were to try.

Then the Defendant produced a Copy of the Record of *Ireland*'s Conviction; which was proved to be a true Copy by Mr. *Percival:* And he deſired to have Counſel aſſigned him to argue this Point of Law, *viz.* Whether the Convictions and Attainders of *Ireland* and *Whitebread*, of a treaſonable Conſult the 24th of *April*, 78, ought not to be taken as a legal Proof of the Fact, ſo long as thoſe Attainders remained in Force? And whether the Averment of ther being falſe, ought to be received againſt thoſe Records?

The Court anſwered, That though that remained a good Record, and unimpeachable ſtill; yet it was lawful to ſay, The Verdict was obtained upon the Teſtimony of ſuch a one, who forſwore himſelf; and for that particular Perjury the Offender might be proſecuted.

Oates. If your Lordſhip rules that for Law, I will go on: And firſt, I ſhall ſubmit it to your Conſideration, Why the Preſentment, and the finding this Bill for Perjury, has been ſo long delayed; ſince it appears, that the

ſame

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ſame Witneſſes were at the Trial of the five Jeſuits, or might have been produced then? And I muſt obſerve, that my Caſe is very hard, ſeeing the Subſtance of my Teſtimony received ſuch Credit, that the Jury were told, upon bringing in their Verdict, That all the Objections againſt the Evidence, were then fully anſwered: That there was nothing that the Priſoners had been wanting in to object, which could be objected; and that the Thing, was as clear as the Sun: And yet, after ſix Years time, I muſt be called in Queſtion for Perjury, in my Teſtimony of that Part of the Popiſh Plot with which the King and Kingdom, four ſucceſſive Parliaments, all the Judges of *England*, and three Juries, were ſo well ſatisfied. The Evidence I gave, they induſtriouſly endeavoured to falſify ſix Years ago by ſixteen St *Omers* Youths, who were examined at *Whitebread*'s and *Langhorn*'s Trials, in neither of which were they believed, becauſe of their Religion and Education, and becauſe their Inſtructors were Men of known Artifice; and if my Evidence were true then, it muſt needs be ſo ſtill; for truth is always the ſame: And I deſire your Lordſhip and the Jury would obſerve, that though the King's Counſel are againſt me now, yet they are alſo againſt themſelves. Mr. Sollicitor was Council for the King at *Langhorn*'s Trial; and Sir *Robert Sawyer*, at Sir *George Wakeman*'s: And can it be ſuppoſed, that it is the Love of publick Juſtice, that is the Cauſe of this Attempt to falſify my Evidence, after ſo many Trials, in which it has been credited and confirmed? Can any thing tend more to ſubvert the Methods of Juſtice, and frighten Witneſſes from diſcovering Conſpiracies? Had the King, his Peers, his Commons and Judges, no Honour, no Juſtice or Underſtanding? Shall thoſe Juries be ſaid to have drawn the innocent Blood of thoſe Men upon their own Heads, and the Nation? As if I am perjured, it muſt be innocent Blood that was ſhed upon it.

Court. Neither Judges or Jury have any Share in that Blood: That is your own moſt certainly.

Oates. My Lord, if you pleaſe to give me Leave to proceed in my Evidence, I deſire theſe Records of Conviction may be read, which are my firſt Proof of the Conſult; and I ſhall then bring Witneſſes, *viva voce*, to prove what I did ſwear at thoſe Trials was true.

L. C. J. The Queſtion now is, Not whether there was a Conſult; but whether you can prove your ſelf to be here on the 24th of *April*, 78? At which Time it is agreed on all Hands, there was a Conſult, as is uſual once in three Years.

Oates. I ſhall not go about to prove, that I was not then at St. *Omers*; but that I was actually in *London:* But to introduce this, it will be neceſſary for me to read the Records of Conviction of *Whitebread* and *Ireland*.

Then the Record of *Ireland*'s Conviction was read in *Engliſh*.

Oates. Now read *Whitebread*'s Attainder; I will not trouble the Court with the whole Record.

Clerk of the Crown. Thomas White, *alias* Whitebread, William Harcourt, *alias* Harriſon, John Fenwick, John Gavan, *and* Anthony Turner, *were found guilty of High-Treaſon, and attainted; and Execution awarded againſt them upon that Attainder.*

Oates. Now I ſhall prove, That at the Trial of *Ireland*, I gave ſo ſatisfactory an Evidence againſt *Whitebread* and *Fenwick*, that my Lord Chief Juſtice *Scroggs* ſaid, *It might be ſufficient to ſatisfy a private Conſcience, though it was not a legal Proof, there being but one Witneſs.*

To which Mr. *Blaney* was called.

He depoſed, That he had looked upon his Notes, but could not find exactly the Words that Mr. *Oates* repeated to him; but there was ſomething to that Purpoſe,

Oates. Did not my Lord Chief Baron ſay to the Jaylor, *You muſt underſtand they are no way acquitted, the Evidence is ſo full againſt them by Mr.* Oates's *Teſtimony that there is no Reaſon to acquit them: It is as flat as by one Witneſs can be?*

Blaney. There is ſuch a Paſſage in my Notes.

Oates See what my Lord Chief Juſtice *Scroggs* ſaid in ſumming up the Evidence againſt *Ireland*, viz. *When the Matter is accompanied with ſo many other Circumſtances, which are material Things, and cannot be evaded or denied, it is impoſſible almoſt, for any Man, either to make ſuch a Story, or not to believe it when it is told.*

Blaney. I find ſuch a Paſſage in my Notes.

Oates. And in ſumming up the Evidence againſt *Ireland*, *Pickering* and *Grove*, had he not this Expreſſion; *You have done, Gentlemen, live very good Subjects, and very good Chriſtians, and like very good Proteſtants; and ~~now~~ much good may their* 30000 *Maſſes do them?*

Blaney. There is ſuch an Expreſſion in my Notes.

Oates. Have you the Notes of *Whitebread*'s Trial?

Blaney. No, I have them not here.

Oates. Then I muſt deſire the printed Trials may be read.

L. C. J. No, they are no Evidence.

Oates. Then give me leave to mention what your Lordſhip ſaid about your Satisfaction with the Evidence: You were then Recorder of *London*.

L. C. J. Ay, with all my Heart: And whatever I ſaid I will own.

Oates. Will your Lordſhip pleaſe to be ſworn then?

L. C. J. No, there will be no need for that; I will own any thing I ſaid then.

Oates. When your Lordſhip gave Judgment of Death upon the five Jeſuits and *Langhorn*, ſpeaking of the Objections that had been made againſt the Evidence, you ſaid, *Your ſeveral Crimes have been proved againſt you; you have been fully heard, and ſtand convicted of thoſe Crimes you have been indicted for.*

L. C. J. I believe I might ſpeak to the ſame Purpoſe.

Oates. And when the Jury brought in their Verdict againſt the five Jeſuits you

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ſaid, *Gentlemen, There has been a long Evidence againſt the Priſoners; they were all indicted, arraigned, and tried for High-Treaſon, depending upon ſeveral Circumſtances. They can none of them ſay, the Court refuſed to hear any Thing they could ſay for themſelves; but upon a long Evidence, and a patient Hearing of the Defence they made, they are found Guilty; and for any thing appears to us, it is a juſt Verdict you have given.*

L. C. J. I might ſay ſomething to that Purpoſe at that time; and no doubt, as the Caſe then ſtood, the Jury did find an unexceptionable Verdict.

Oates. And, my Lord, when you were Counſel for the King in *Colledge*'s Trial at *Oxford*, addreſſing yourſelf to the Jury, you had this Expreſſion: *We come not here to trip up the Heels of the Popiſh Plot, by ſaying, That any of them who ſuffered for it, died contrary to Law.*

L. C. J. Deceive not yourſelf; all this you have inſiſted on hitherto, has not been to the Purpoſe, or is any ſort of Evidence in this Caſe. What my Lord Chief Juſtice *Scroggs* ſaid at any of thoſe Trials, or what I ſaid, or any other Perſon who was Counſel or Judge upon the Bench; it was but our Opinion on the Fact, as it occurred to our preſent Apprehenſions, and is no Evidence or Binding to this Jury. And there is no doubt, but thoſe Juries did believe the Evidence you gave then, or they would not have convicted the Priſoners. I do not diſcommend you for inſinuating theſe Things, as introductive and preparative to your Defence; but it is no Evidence one way or other. We have many times, in *Weſtminſter-Hall*, Verdict againſt Verdict: And in theſe Caſes, we give our Opinions according to the preſent Teſtimony that is before us.

Oates. If then I prove, my Lord, that *Ireland* was engaged in a Deſign againſt the late King's Life, and was a Prieſt and a Jeſuit; will not this be a collateral Evidence to render my Credit ſufficient, and ſupport my Teſtimony?

L. C. J. It may give ſome Credit to your Teſtimony; but it is not, of it ſelf, ſufficient upon this Indictment. Nay, I will ſuppoſe there was a Conſult of Jeſuits in the *Strand*, the 24th of *April*, 78, where theſe, you ſay, were all preſent, and did come to the Reſolution you mention; and yet you will not be innocent if you were not there too, as you ſwear. Therefore give us ſome Teſtimony, to ſatisfy us you were there, if you would ſet all right again. Call two or three Witneſſes, to prove you were in Town the 22d, 23d, or 24th of *April*, it would be the beſt Defence you could make.

Oates. I will follow your Directions, my Lord.

Oates. Then *Cecilia Mayo* was ſworn.

Oates. Pray give the Court an Account, if you did not ſee me in *London* the latter End of *April*, or the Beginning of *May*, 1678?

Oates's *Evidence, to prove he was at* London *at the Conſult.*

Mayo. My Lord, I ſaw him the latter End of *April*, at my Maſter, Sir *Richard Barker*'s, where I then lived; and he came thither again in a few Days: I remember it by this Circumſtance; Sir *Richard* was ſick all the Month of *April*, and in the Country, and came to Town but now and then; and Mr. *Oates* came when he was abſent: And a young Man that lived in the Houſe, came and told me, there was Mr. *Oates* in a ſtrange Diſguiſe, and he believed he was turned Quaker. I had never ſeen Mr. *Oates* before then.

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L. C. J. How do you know that to be Mr. *Oates* then?

Mayo. The Family knew him, and they told me it was he. My Lord, he came three or four Days afterwards to the Houſe, and then the young Man came and told me, Parſon *Oates* was turned Jeſuit: And coming to Sir *Richard*'s Lady's Siſter, ſhe ſaid to him, I hear you are turned Jeſuit, and we can have no Society with you now; but he ſtaid Dinner with them, and moſt part of the Day. *Then he came the latter End of* May: *Whitſuntide* was in *May* that Year, and I know he came the ſecond time before *Whitſuntide*; for we uſed to Waſh and Scour before that Time; and I was ſending to a Woman to help to Waſh and Scour, when the young Man told me he was there.

L. C. J. What was the Name of that young Man you ſpeak of?

Mayo. His Name was *Benjamin*; but he is dead.

L. C. J. Is Sir *Richard Barker* living?

Mayo. He is, my Lord; but he is not well, or he would have been here.

L. C. J. Who dined with him when he dined there?

Mayo. There was my Lady's Siſter, Madam *Thurrel*, and her two Sons: She is in *Wales*, but her Sons are dead. --- There was one Dr. *Cocket* too, who is in *Wales* at preſent. And there were two of my Lady's Daughters, that are living in *Lincolnſhire*, I think.

L. C. J. It is a great Misfortune to have ſo many dead, or ſo far remote.

Oates. My Lord, ſix Years makes a great Alteration in a Family.

Att. Gen. Mr. *Oates* has had Time enough to ſend for his Witneſſes, for he has had Notice of his Trial this half Year. Pray, Mrs. *Mayo*, What coloured Cloaths had Mr. *Oates* when you ſaw him firſt?

Mayo. He had a whitiſh Hat, and coloured Cloaths.

John Butler, Coachman to Sir *Richard Barker*, depoſed, That, as he remembered, the firſt Time he ſaw Mr. *Oates* was in *May* (78,) before the Plot was diſcovered, That he came to his Maſter's in a Diſguiſe, having a white Hat flapping over his Eyes, his Hair cut cloſe to his Ears, and a grey ſhort Coat on; and the next Time he ſaw him at his Maſter's he had a Cinnamon-coloured Coat, a long black Peruke, a black Hat with a green Ribbon, and green Cuff-ſtrings at his Wriſts; and that he dined at his Maſter's about ſeven Times.

The Chief Juſtice then demanding of Mrs. *Mayo*, *Butler*'s Fellow Servant, how often *Oates* dined at her Maſter's Sir *Richard Barker*'s, affirmed, He dined there but once, and that he had on a grey Coat, a grey Hat, and a ſhort

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ſhort brown Wig; and that he afterwards came in black Cloaths, and a long brown Peruke.

The Chief Juſtice obſerving there were ſeveral Contradictions in their Evidence, *Oates* ſaid, Theſe Things were very lean Stuff to perjure a Witneſs upon: That his Lordſhip was not ſo ſtrict with the St. *Omers* Witneſſes, And what did it ſignify, Whether the Wig were long, or ſhort, black or brown?

The Chief Juſtice replied, There was no other Way to detect Perjury, but by ſuch Circumſtances: In *Suſanna*'s Caſe the Perjury was diſcovered by Circumſtances.

Philip Page depoſed, That he was Servant to Sir *Richard Barker*, and *Oates* came thither diſguiſed in a light-coloured Coat, a broad-brimmed Hat, and his Hair cut ſhort to his Ears, and asked him for Doctor *Tongue* and Sir *Richard*; and he thought this was in *May* 78; but could not be poſitive what Month or Year it was.

Mr. *Walker* depoſed, He met *Oates* between St. *Martin*'s-*lane* and *Leiceſter-fields*, in a Diſguiſe, between *Lady-day* and the latter end of *April*, 78.

The Chief Juſtice demanded, where he lodged or dieted all that while he pretended to be in Town? *Oates* anſwered, That was not now the Queſtion. If he proved he was not at St. *Omers* in the Months of *April* and *May*, but here in *London*, he proved the St. *Omer*'s Evidence to be falſe; and it was not to be expected, as he was engaged among Papiſts, and afterwards an Evidence to diſcover their Treaſons, they would come to teſtify any thing in his Behalf now.

Then he called the Earl of *Huntington* as a Witneſs for him, and deſired his Lordſhip would give an Account, What Credit he had in the Houſe of Lords upon his Diſcovery.

The Earl anſwered, He believed Mr. *Oates* found a good Reception in the Houſe of Lords, which was founded upon an Opinion, that he was an honeſt Man; but ſince that Time it appearing there were ſo many and great Contradictions, Falſities, and Perjuries in his Evidence, upon which ſo much innocent Blood had been ſhed, he believed a great many that were concerned in the Trials of thoſe unfortunate Perſons were heartily afflicted and ſorry for their Share in it: And he believed, moſt of the Houſe of Peers had altered their Opinion of this Man's Credit, and looked upon his Evidence to be very falſe.

Mr. *Oates* called a great many other Perſons of Quality, Peers, Judges, and Commoners; ſome of whom did not appear, and the reſt teſtified nothing to his Advantage, but rather the contrary; particularly, the Lord Chief Baron, of whom *Oates* deſired, that his Lordſhip would declare the Satisfaction he received concerning the Fairneſs and Fullneſs of the Evidence given at the Trials of *Whitebread* and *Langhorne*. To which the Chief Baron anſwered, There were a great many Perſons, and Gentlemen of good Families, who came from St. *Omers*, and gave Evidence of Mr. *Oates*'s being there when he ſaid he was in *London*. *Oates* demanding further, If the Jury believed them at that Time? the Chief Baron anſwered, he could not tell what the Jury did, but he never had any great Faith in Mr. *Oates* himſelf. Whereupon *Oates* replied, He was not at all concerned at this: He valued himſelf more upon his Innocency and Integrity than any Man's good Opinion whatever: He would ſtand to what he had ſworn with his laſt Breath, and ſeal it, if Occaſion was, with his Blood. The chief Juſtice anſwering, It were Pity but that it were to be done by his Blood, *Oates* replyed, Ah, my Lord, I know why all this is, and ſo may the World very eaſily too; but this will not do to make the Plot disbelieved.

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Evidence of Oates's *ſuborning Witneſſes, to ſupport the Credit of the Plot.*

The King's Counſel then called Mr. *Smith* to depoſe, that *Oates* ſuborned him to perjure himſelf: But the Chief Juſtice refuſed to hear the Teſtimony of a Man, who came to ſwear he had perjured himſelf at a former Trial.

Then they produced Witneſſes, who proved that *Oates* would have ſuborned *Clay* at the Trial of the five Jeſuits.

Mr. *Howard* depoſed, That *Clay* was not at Dinner at his Houſe in *May* 78, as *Clay* had depoſed.

And a Paragraph of *Oates*'s Narrative was read, wherein he had ſworn, *That he returned to St.* Omers *three or four Days after the Conſult at the* White-horſe.

Whereupon Mr. Attorney obſerved, That *Oates*'s Witneſſes ſwore he was in *London* the latter end of *May*; which could not be true, if *Oates* himſelf ſwore true in his Narrative.

Then a Reſolution of the Houſe of Lords was read, at *Oates*'s Deſire, importing, That they believed the Popiſh Plot.

And another Reſolution, for taking up Capt. *Berkley*, for villifying *Oates*'s Evidence.

He proceeds in his Defence.

Being directed to go on with his Defence, he objected that the Papiſts were not legal Witneſſes, becauſe they were Parties in the Cauſe; and deſired Counſel to argue that Point of Law. To which the Chief Juſtice anſwering, That was no Point of Law, *Oates appealed to all his Hearers, if he had Juſtice done him.* The Lord Chief Juſtice then replied, He was an impudent Fellow; he muſt appeal to none but the Court and the Jury: They ſhould ſtop his Mouth if he did not behave himſelf as he ought: He would ſuffer none of his Commonwealth Appeals to the Mob.

Oates then objected, That the Witneſſes were bred up inSeminaries, againſt Law: The Chief Juſtice replied, Every Man that was bred a Diſſenter was bred up againſt Law.

He inſiſted, That a Witneſs for the King could not be indicted of Perjury, or the Plot called in queſtion now.

The Chief Juſtice anſwered, this was nothing to the Purpoſe. After which, Mr. *Oates* proceeded to ſum up the Evidence for himſelf, and obſerved, That Mrs. *Mayo* came and gave her Evidence voluntarily, without any Hopes of a Reward, but out of a Love to Juſtice; and therefore inſinuated, that her Teſtimony was not to be ſuſpected; for People ſeldom perjured themſelves, but where there was Malice or Intereſt in the Caſe. Then he repeated the Evidence of *Butler* and *Page*, and ſaid, He had *ſubpœna'd* Sir *Richard Barker*,

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Barker, to confirm the Evidence of these People. And he did expect that Mr. *Smith* would have been examined: But he perceived the Court were tender of that Point, as knowing, it would then eaſily have been ſeen upon which Side he was ſuborned.

Court. It was to do you Right, we refuſed to have him ſworn; but if you conſent to it, he ſhall be examined ſtill.

Oates. My Lord, the Evidence on which I am indicted for Perjury, is the ſame that was given ſix Years ago. There was there ſixteen Witneſſes produced againſt me; but what Credit did they receive? Now, if the Evidence I gave then was to be believed, though oppoſed by ſo many Witneſſes, what new Objection does ariſe, which was not then urged, and received an Anſwer? And I hope thoſe Paſſages of Heat, that have fallen from me, ſhall not make me fare the worſe in your Judgment. I called ſome Noble Lords to teſtify for me; but either the Diſtance of Time has wrought upon their Memories, or the Difference of the Seaſon has changed their Opinion: So that they now disbelieve what they believed before, and perhaps for as little Reaſon as-----

L. C. J. As they believed you at firſt.

Oates. Yes, truly, my Lord; for I cannot expect, that a Man who believes without a Principle, ſhould not recant that Belief without a Reaſon----I name no body.

L. C. J. But the Nobility, that are preſent and have been Witneſſes in this Cauſe, are all Perſons of that Honour, that the Court is bound to vindicate them from theſe ſcandalous Reflections; but I only think, a Slander from your Mouth is very little Scandal.

Oates. Nor from ſomebody's elſe neither: I find, my Lord, I am not to be heard with Patience.

L. C. J. You do not deſerve to be heard at all: Can't you ſpeak without Reflections?

Oates. Was ever Man dealt with as I am? Or had ſuch Evidence offered againſt him? Here are the Youths of St. *Omers* Seminary, Sir *George Wakeman*, and my Lord *Caſtlemain*, known Papiſts; and perhaps Popiſh Recuſants convict too. And the Record of my Lord's Acquittal is brought as an Evidence of my being perjured; when all the World knows, he came off, becauſe there was but one Witneſs againſt him. And *Wakeman*'s Acquittal too is brought, and he ſwears, That what I depoſed againſt him was falſe; but had it not been for two diſhoneſt Perſons, (one of them is now in my Sight) we could at that Time have proved five thouſand Pound paid him, and that he gave a Receipt for it. This, I am ſure, had I been a Witneſs for the Fanatick Plot; I had never been queſtioned, though my Evidence had been falſe: But the Papiſt have now a Turn to ſerve, and come to bear this Teſtimony on purpoſe to falſify my Evidence, and bring off the Popiſh Lords, who now ſtand impeached of High-Treaſon. But, I hope, as the Court would never admit Indictments of Perjury againſt the Witneſſes in my Lord *Shaftesbury*'s Caſe, ſo you will not admit it here. My Lord, it is not me they proſecute, but the whole Proteſtant Intereſt. Do they not, hereby, arraign the Proceedings of ſeveral Parliaments? of all the Courts of Juſtice, and the Verdicts of thoſe Juries that convicted the Traitors? For my Part, I care not what becomes of me; but the Truth will one Time or other appear: And ſince I have not the Liberty to argue what is moſt material for my Defence, I appeal to the great God of Heaven and Earth, and once more in his Preſence, and before this Auditory do avow, That my Evidence of the Popiſh Plot is true in every Part of it, and will expect from Almighty God the Vindication of my Integrity and Innocence. Having concluded his Defence, He ſaid, he was troubled with the Gout and Stone, and deſired that he might not be put in Irons again, he being only a Debtor to the King upon a Civil Account; and if he were convicted on theſe Indictments, he could be but in Execution for a Treſpaſs; and therefore thought he ought not to be ſo handled. The Marſhal informed the Court, That it was but the laſt Night, Ropes were brought into his Chamber to favour his Eſcape. Then the Court directed he ſhould be kept *in ſalva & arcta Cuſtodia*.

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Then Mr. Sollicitor ſummed up the Evidence for the King; but, before he had made any great Progreſs, Mr. *Oates* ſaid, he was ill, and deſired Leave of the Court to withdraw.

Then Mr. Sollicitor proceeded; and having ſummed up the Evidence that had been given for the King, he obſerved, That, of the 20 Witneſſes produced, not above two or three of them were at the former Trials; though, indeed, they teſtified the ſame Things that were atteſted then; but with many other Circumſtances and Particulars. That to this, indeed, *Oates* had objected, that ſeveral Witneſſes came from St. *Omers* before, but were not believed; but that the Men were convicted, condemned and executed upon his Teſtimony. That he had alſo brought a Counter-proof, and endeavoured to ſhew, he was actually in *England*, when the St. *Omers* Witneſſes had ſworn him to be in the College.

As to the Evidence of *Page*, Mr. Sollicitor obſerved, That he was not poſitive either to the Month or Year he ſaw Mr. *Oates*; and as for *Walker*, the Parſon, he being asked, what Circumſtances he knew the Time by, ſaid, It was a Year and a Quarter before the Plot was diſcovered; which was a Year before *Oates* pretended to be at the Conſult; and therefore could do him no Service.

As to the Evidence of Mrs. *Mayo*, and *Butler*, he obſerved, they contradicted one another: For ſhe depoſed, That the firſt Time *Oates* came, ſhe did not ſee him; and *Butler* ſwears, ſhe looked out of the Window, and did ſee him as well as he: And, ſhe ſaid, he was in grey cloaths, a white Hat, and a ſhort Peruke; and *Butler* ſaid, he had no Peruke, but his Hair cut ſhort to his Ears. Then, the ſecond Time, ſhe ſwears, he was in black cloaths, and an indifferent long Peruke, and that the Peruke was brown. And *Butler* ſwears, he was in Cinnamon-coloured Cloaths, and a long black Peruke; ſo that the Witneſſes could not be reconciled to one another.

He

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He obſerved too, That ſhe had ſworn, *Oates* was at her Maſter's a Week before *Whitſuntide*, which was the 19th of *May*: And this contradicted Mr. *Gerrard*'s Teſtimony, who ſwears, they were both confirmed the 16th, at St. *Omers*; which was ſo remarkable a Circumſtance, that there was no Room to think Mr. *Gerrard* miſtaken.

And farther, That Mr. *Oates* himſelf had contradicted his own Witneſſes; for he had ſworn he went over with the Fathers three or four Days after the Conſult, which was the 24th of *April*; and they atteſt that he was here in the Middle of *May*: And if it ſhould be admitted the Conſult continued five or ſix Days, as he had ſuggeſted, yet that would not bring it to the Time they had ſworn to.

That falſe Witneſſes were often detected by ſmall Circumſtances, but that theſe were very remarkable; and it was impoſſible they could both ſwear true.

That the Evidence of *Clay* the Prieſt, on which ſuch Streſs was laid at a former Trial, was not only taken away by Mr. *Howard*'s Teſtimony, but the additional Crime of Subornation was now fixed upon *Oates*, who it appeared, had threatned *Clay* he would hang him, if he did not ſwear what he ſuggeſted to him: And it was well known what Fears ſuch People lay under at that time.

That it was impoſſible Mr. *Oates* could be ſo long in Town as he pretended, and be ſeen by no body but thoſe few Perſons he mentioned, conſidering his large Acquaintance; and that he appeared ſo publickly, as his Witneſſes depoſed.

That though he had lodged at the Houſes of Perſons that did not care to give their Evidence in this Matter, yet it was ſtrange he could not produce one Circumſtance to prove his Lodgings at any Place, during that Time, if he could not have the Teſtimony of the Landlord of the Houſe: And that none of thoſe he had converſed with, or was intimate withal, ſhould ſee him, or be able to give an Account of him, was one of the ſtrangeſt Things in the World.

That indeed he inſiſted upon it, That the calling his Credit in queſtion, was to arraign the Juſtice of the Nation, the Wiſdom of the Parliament, and the Honeſty of the Juries, who convicted thoſe he had accuſed. But the Sollicitor urged, That if the Thing was duly conſidered, the not puniſhing this heinous Offence with the utmoſt Severity the Law would allow, now theſe Circumſtances had appeared to make it evident, would be a much more greater Reproach to the Nation.

That it was ſtrange, indeed, that the Defendant ſhould ever obtain that Credit he once had: But it was not then imagined, that any Man on Earth could become ſo impudent as to expoſe himſelf before the High Court of Parliament, and the great Courts of Juſtice, and there tell a moſt infamous Lie, to deprive Men of their Lives. The Hardineſs of the Attempt, was one great Inducement to the Belief of it; becauſe no Man could be preſumed to dare the doing of ſuch a Thing, if he had not had ſome Foundation of Truth to build upon. And when he had made this Diſcovery of a moſt horrid and bloody Conſpiracy, to murder the King, overturn the Government, and maſſacre all the Proteſtants in the Kingdom; it was natural enough for the Parliament to be alarmed, and take all imaginable Care to prevent the Accompliſhment of ſo much Miſchief. If we conſider too, how much eaſier it was for him to relate his Evidence in a continued Story, than afterwards it was to maintain it, when he was oppoſed by them that were accuſed, who beſt knew by what Means to prove him falſe.

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That the Care the Parliament took to diſappoint any Deſigns of this Nature, and the Means they uſed for the Security of the King and Kingdom, and the Preſervation of our Religion and Lives (which was previous to the Trials) naturally put the whole Nation under great Apprehenſions of Danger, and made the Way much eaſier for him to be believed. Under theſe Circumſtances (and theſe improved by deſigning Men) came thoſe unhappy Perſons to be tried; which leſſens our Wonder, if under theſe Diſadvantages, while the Men who tried them were under theſe Fears and Apprehenſions, they had the ill Fortune to be convicted. But when Men had a little overcome their Fears, and began to conſider his Evidence more calmly, *Oates* ſoon loſt his Credit, and the Men he afterwards accuſed, were all acquitted.

Nor was this Proſecution any Reflection on the Proteſtant Religion, whoſe Cauſe he falſly aſſumed. The Proteſtant Religion had no Share in the Invention, and needed not the Support of a Lie. It was rather a Vindication of our Religion, to puniſh ſuch Offenders; and the proper Way to maintain the Juſtice of the Nation, and wipe off that Reproach that this Man's Perjury has brought upon it.

The Chief Juſtice's Directions to the Jury.

Then my Lord Chief Juſtice ſummed up the Evidence, and gave his Directions to the Jury: And to the Obſervations Mr. Sollicitor had already made, he added, That the dreadful Apprehenſions People were under of their Religion, the Subverſion of the Government, of the King's being murdered, and of their Throats being to be cut by the Papiſts, at the Time of *Ireland*'s Trial, was arrived to that Height, and *Oates*'s Diſcovery of thoſe impending Dangers ſo much credited, that all other People appeared below him; and greater Reſpect was ſhewn him, than to the Branches of the Royal Family. And in publick Societies, ſometimes, this profligate Villain was careſſed and drank to, and ſaluted by the Name of THE SAVIOUR OF THE NATION. And that it was no Wonder, if under ſuch a Conſternation, or rather Infatuation, of all Sorts of People, all of the *Romiſh* Perſuaſion were looked on with an evil Eye; and the Conviction of thoſe who were accuſed, rendered too eaſy. He obſerved, That the principal Part of *Oates*'s Defence conſiſted in this, That becauſe he was believed formerly, before his Villany was detected, they therefore ſhould believe him now, notwithſtanding his Perjury had been diſcovered; and that, to the poſitive Teſtimony of twenty-two Witneſſes, who had

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ſworn he was at St. *Omers*, he had not made the leaſt Shadow of an Objection, but only that they were Papiſts, and he was a Proteſtant. But his Lordſhip obſerved, there were Raſcals of all Perſuaſions; and he thought it was not much for the Honour of the Church that *Oates* called himſelf a Proteſtant: That they knew Dr. *Oates* had been very liberal to himſelf; he had given himſelf Baptiſm, and given himſelf the Doctor's Degree, and now he gave himſelf the Title of the Reforming Proteſtant, Mr. *Oates*. That we had Proteſtant Shoemakers, and Proteſtant Joiners, and all Sorts of true Proteſtant Raſcals; but it would become the Jury to aſſert the Honour of their Religion, by diſowning any Fellowſhip with ſuch Villains, or their Actions.

That beſides the Evidence againſt him, they ſhould conſider the Improbability of his Teſtimony: That fifty Perſons ſhould meet together at a Tavern, and come to a Reſolution to kill the King, and ſubvert the Government, and alter the Religion: And that this Reſolution being drawn up at the Tavern, they ſhould ſeparate themſelves into leſſer Clubs and Companies, and none of them ſign it when they were all together, and among themſelves; but ſhould afterwards have it carried up and down from one Houſe to another, and find no Body to truſt with it but Mr. *Oates*, who was not one of their Order, and did not appear to have any Credit amongſt them; when the Affair was of that Importance, that, if diſcovered, it muſt ſubject them to preſent Deſtruction, and ruin their whole Party. Could it be believed, that any Man ſhould be ſo void of Senſe and Reaſon, and that of fifty together, and thoſe reputed the ſubtileſt of Mankind, there ſhould not be one Man that ſhould take Care of a more rational Management of ſo great and hazardous an Undertaking? When they were met together, and might have diſpatched the Buſineſs in a Quarter of an Hour, that they ſhould ſeparate themſelves into ſeveral Parts of the Town, and truſt a Reſolution of that Nature in Mr. *Oates*'s Pocket; in whom, if they had more Confidence than they ſeemed to have, yet it was Folly and Madneſs to give him that Opportunity of deſtroying them all, and making his own Fortune: And that, if there were no other Evidence than the Teſtimony of the Thing, his Lordſhip ſaid, it would have gone a great Way with him; but that there being the ſuperadded Teſtimony of twenty-two Witneſſes, there was no room left to doubt of the Falſity of his Evidence.

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That as to the Buſineſs of *Smith*, though the Court, in their private Judgments, did believe the Thing, yet they thought it not fit to permit, that Perſons ſhould, upon their Oaths, confeſs themſelves guilty of Perjury, and afterwards give Evidence againſt others; yet by the Records of Parliament, and other Evidence, there was enough to make that Matter clear. For by *Oates*'s Narrative, it appears, That his firſt Evidence tended to bring *Smith* into the Diſpleaſure of the People; for his Way was to frighten thoſe he deſigned to deal with, and thereby force them to comply with his Deſigns. And there could not be a more plauſible Accuſation at that Time, than to charge a Man with ſaying ſomething againſt the Parliament, or with being in a Combination to ſubvert the Proteſtant Religion: But when he has a Turn to ſerve by him, then this Man, on whom he had fixed ſuch an odious Character, he tells us is really no Papiſt, but is engaged in Service for his King and Country; and has Mr. *Oates*'s Paſs-port, which was a Thing of no ſmall Advantage to him at that Seaſon. This was, with great Reaſon, made Uſe of by the King's Counſel, as an Evidence of his tampering: For the Man ſuddenly alters his Opinion of one he had before accuſed, and produces him as an honeſt Man to give Evidence for him. And this, they urge, muſt be intended to be done by Practice and Threatnings: And the rather, for that it had been proved, that he did actually practiſe upon *Clay* in like Manner. And my Lord Chief Juſtice concluded, that if the Witneſſes for the King ſwore true, as he ſaw no Colour of an Objection againſt their Teſtimony, then *Oates* was the moſt perjured Villain upon the Face of the Earth.

Then the Court told the Jury, they might drink before they went from the Bar, but they did not deſire it; and having withdrawn a Quarter of an Hour, they returned with this Verdict. *Oates convicted.*

That the Defendant was GUILTY of the Perjury whereof he was Indicted.

The Chief Juſtice told them, he was ſatisfied in his Conſcience, they had given a juſt Verdict, to which the reſt of the Judges Aſſented; and then the Court aroſe.

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The Trial of TITUS OATES for Perjury in the Court of *King's-Bench*, on the 9th of *May*, 1685. 1 *Jac.* II.

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Oates's 2d Trial for Perjury. The Indictment.

THE Indictment ſet forth, that the Defendant *Titus Oates*, at the Trials of *Ireland*, *Pickering*, and *Grove*, on the 17th Day of *December*, in the 30th Year of the late King *Charles* II. did falſly ſwear, and give Evidence to the Jury who tried that Cauſe, That the ſaid *William Ireland*, was in Town upon the firſt or ſecond Day of *September* 1678. Whereas, in Truth, the ſaid *William Ireland* was not in Town on the firſt or ſecond Day of *September* 1678; and ſo the ſaid *Titus Oates*, did commit wilful and corrupt Perjury.

The Indictment further ſets forth, That the ſaid *Titus Oates*, at the Trials of *Whitebread*, *Fenwick*, and other Jeſuits, on the 13th of *June*, in the 31ſt Year of the late King, did falſly ſwear, and give Evidence to the Jury who tried that Cauſe, That *William Ireland* took his Leave of him, the ſaid *Titus Oates*, and others, at the Chamber of the ſaid *Ireland*, then being in *Ruſſel-ſtreet*, *Weſtminſter*, between

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tween the 8th and 12th Days of *Auguſt*, 1678. Whereas in Truth, the ſaid *William Ireland.* did not take his Leave of the ſaid *Titus Oates*, or any other Perſon at his Chamber in *Ruſſel, Street*, between the ſaid 8th and 12th Days of *Auguſt*, and ſo the ſaid *Titus Oates* did again commit wilful and corrupt Perjury.

The King's Counſel, having opened the Indictment and the Evidence, produced the Records of the ſaid two Trials mentioned in the Indictment, and then called the Witneſſes:

The Evidence.

Whereupon Mr. *Harriot* and Mr. *Waterhouſe* were ſworn, and Mr. *Harriot* depoſed, That at the Trial of the five Jeſuits, *Oates* did poſitively ſwear, That Mr. *Ireland* the Jeſuit did take Leave of him and others at the ſame *Ireland*'s Chamber in *Ruſſel-ſtreet*, betwixt the 8th and 12th of *Auguſt* 1678. *He was Foreman of that Jury.*

Sol. Gen. What ſay you, Mr. *Waterhouſe*?

Waterhouſe. I was of that Jury too. *Oates* depoſed, that Mr. *Ireland* took his Leave of him the 12th of *Auguſt*. My Lord Chief Juſtice *Scroggs* then asked him, are you ſure it was the Twelfth? And then he ſaid, he would not be poſitive it was the 12th; but between the 8th and 12th it was, I am poſitive upon my Oath.

Oates. Mr. *Harriot*, did I ſwear that he took his leave of me, or I took my leave of him?

Mr. *Harriot.* You ſwore that *Ireland* took his leave of you and others.

Oates. Did Mr. *Harriot* take Notes at the Trial?

Mr. *Harriot.* Yes, I did; and it was my Manner, in all Trials I was concerned as a Juryman, to read the Trials ſtrictly over when they were printed, and compare them with my Notes: And this I found to be in the printed Trial, according to my Notes.

Oates. Mr. *Waterhouſe*, you did not take Notes: Pray, how come you to remember that I was ſo poſitive, as to the Time betwixt the 8th and 12th of *Auguſt*?

Mr. *Waterhouſe.* Becauſe my Lord Chief Juſtice made a Stop, when you ſaid it was the 12th of *Auguſt*, and bid you conſider; and you conſidered it, and did affirm poſitively, That it was between the 8th and 12th of *Auguſt*.

Mr. *Foſter* was ſworn.

Sol. Gen. Pray tell what you remember Mr. *Oates* ſwore at Mr. *Ireland*'s Trial, about Mr. *Ireland*'s being in Town.

Mr. *Foſter.* I was one of the Jury at the Trial of Mr. *Ireland*, *Pickering*, and *Grove*; and Mr. *Oates* and Mr. *Bedloe* were ſworn as Witneſſes for the King: And Mr. *Bedloe* depoſed, That there was a Meeting at *Harcourt*'s Chamber, and *Ireland*, *Pickering*, and *Grove* were there; and that this was the latter End of *Auguſt*. Mr. *Ireland* made his Defence, and endeavoured to prove, That he was not in Town from the Beginning of *Auguſt* to the Middle of *September*, and brought ſeveral Witneſſes. But upon his denying to be here the latter End of *Auguſt*, Mr. *Oates* did come and ſwear; I am certain (ſays he) that the 1ſt or 2d of *September* he was in Town; for then I had of him twenty Shillings.

Oates. Was I poſitive that he was here in Town the firſt or ſecond of *September*?

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Mr. *Foſter.* You were poſitive to the firſt or ſecond; I have it in my Notes.

Mr. *Byfield*, another of *Ireland*'s Jury, was ſworn.

L. C. J. What did *Oates* ſwear?

Mr. *Byfield.* Mr. *Oates* did poſitively aſſert, That *Ireland* was here in Town the firſt or ſecond of *September*; and to confirm it, he ſaid he received of him twenty Shillings.

Then Mrs. *Ireland*, the Mother of him that was executed, his Siſter *Anne Ireland*, and two more Women, depoſed that the ſaid Mr. *Ireland* went out of Town on *Saturday* the 3d of *Auguſt* 1678, and that he returned to his Lodgings in Town again, being in the ſame Houſe where his ſaid Mother and Siſter lodged, on the 14th of *December* following. The Lord *Aſton* depoſed, that Mr. *Ireland* came to his Houſe, at *Standen* in *Hertfordſhire*, on the 3d of *Auguſt*: That on *Monday* the 5th of *Auguſt*, Mr. *Ireland*, accompanied him to St. *Albans*, where he met his Brother and Siſter *Southcoat*, and that they all travelled together to *Tixhall*, his Lordſhip's Houſe in *Staffordſhire*, where they arrived the 8th of *Auguſt*.

Sir *Edward Southcoat*, depoſed, That on *Monday* the 5th of *Auguſt*, he lay with the Lord *Aſton* and Mr. *Ireland*, at the *Bull* at St. *Albans*; and that they ſet out together the next Day, and travelled to *Tixhall*, the Lord *Aſton*'s Seat, in *Staffordſhire*, where they arrived on *Thurſday* following: That they remained there till *Tueſday* after, and then went to St. *Winifred*'s *well* in *Wales*, returning to *Tixhall* again the 16th of *Auguſt*; and Sir *Edward* named every Houſe they lay at on the Road in this Journey. He alſo depoſed, That he ſet out with Mr. *Ireland*, from *Tixhall*, on *Monday* the 9th or 10th of *September*; and the fourth Day they reached his Father's Houſe, at *Kingſton* in *Surry*; and, on *Saturday* following, Mr. *Ireland* went from his Father's Houſe to *London*.

Mr. *John Southcoat* gave the ſame Account of the Journey with the Lord *Aſton* and Mr. *Ireland*, from St. *Alban*'s to *Tixhall*, and St. *Winifred*'s *Well*; and of Mr. *Ireland*'s returning to *London* in the Middle of *September*; which he remembred the better, having bought Mr. *Ireland*'s Horſe at the Time he returned to Town: And this Circumſtance Sir *Edward* alſo remembred.

Oates demanding if Mr. *Southcoat* was ſure that *Ireland* was in his Company from the 5th of *Auguſt* to the 16th? Mr. *Southcoat* anſwered, Yes, every Day; he remembered it very well; but where Mr. *Ireland* was from the 16th of *Auguſt* to the Time he returned to *London*, theſe Witneſſes could not ſay; only that they ſaw him ſeveral Times in *Staffordſhire* during that Interval.

Harriſon, Sir *John Southcoat*'s Coachman, depoſed, That he drove his Maſter from St. *Alban*'s to *Tixhall*, and from thence to *Holywell* in *Wales*, in *Auguſt* 78; and that Mr. *Ireland* was in their Company all the Time.

The former Witneſs depoſed, that in *September* he returned, with Mr. *Ireland* to his Maſter's Houſe, near *Kingſton* in *Surry*; and that

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that Mr. *Ireland* having ſold his Horſe to Mr. *John Southcoat*, his Maſter's Son, he went with Mr. *Ireland* to his Lodgings in *Ruſſel-Street*, in Town, on *Saturday* the 14th of *September*, and brought the Horſe back to his Maſter's.

This Account, the Chief Juſtice obſerved agreed with what the Women depoſed, That *Ireland* returned to his Lodgings, in Town, a Fortnight before *Michaelmas*; and, directing his Speech to the Defendant *Oates*, ſaid: Thus far it is as clear as the Sun at Noon-day. ------I muſt tell you, *prima facie*, it is ſo ſtrong an Evidence, that, if you have any Senſe, you muſt be concerned at it.----Upon my Faith, I have ſo much Charity for you, as my Fellow Creature, as to be concerned for you.

Oates anſwered, *'Tis not two Straws Matter whether you are or no; I know my own Innocence.*

The Chief Juſtice replied, Thou art the moſt impudently hardened Wretch that ever I ſaw.

Oates replied, You may think what you will, my Lord; but theſe Popiſh Traitors will ſwear any thing, and ſuborn Witneſſes upon Witneſſes againſt me, to diſcredit the Popiſh Plot.

George Hobſon depoſed, That he lived at the Lord *Aſton*'s, and that Mr. *Ireland* came to his Lordſhip's Houſe, at *Standen* in *Hertfordſhire*, on *Saturday* the 3d of *Auguſt*, 78; and he travelled with the Lord *Aſton*, and Mr. *Ireland*, to *Tixhall*, and ſaw *Ireland* every Day, from the 3d of *Auguſt* to the 16th.

Several other Witneſſes depoſed, That Mr. *Ireland* came to *Tixhall* the 8th of *Auguſt*, 78, where he ſtaid till the 13th, then went to *Holywell* in *Wales*, and returned to *Tixhall* the 16th.

Mrs. *Harwell* depoſed, That Mr. *Ireland* came to her Houſe, at *Wolverhampton* in *Staffordſhire*, on the 17th of *Auguſt*, 78, and ſtaid there till *Monday* the 26th, and then returned to *Tixhall*, as he ſaid: That he came to her Houſe again on the 4th of *September*, and on the 7th of *September* went away from her Houſe for good and all.

Oates demanding if this Witneſs was at *Ireland*'s Trial, ſhe anſwered, No; but ſaid ſhe heard, on the 19th of *December*, 78, that Mr. *Ireland* was tried the 17th, two Days before; and Mr. *Oates* had ſworn he was in Town, when they could prove he was in *Staffordſhire:* And ſhe ſent away a Meſſenger immediately to a Friend in *London*, to acquaint him, that Mr. *Ireland* was falſly accuſed, and to petition his Majeſty, that they might bring up Witneſſes to prove Mr. *Ireland* was in *Staffordſhire* when *Oates* ſwore he was in Town: And the King ſtaid the Execution five Weeks; but at length he was executed.

A great many more Witneſſes depoſed, They ſaw Mr. *Ireland* at *Wolverhampton* at the Times the laſt Witneſſes mentioned.

Sir *Thomas Whitegrave*, a Juſtice of Peace, depoſed, He ſaw Mr. *Ireland* on *Tixhall* Bowling-Green, on *Thurſday* the 29th of *Auguſt*.

Mr. *Fowler* depoſed, He ſaw him at *Etchinghill* in *Staffordſhire*, the 27th of *Auguſt*, 78, and at *Tixhall* Bowling-Green the 29th. 1685. 1 Jac. I.

Several other Witneſs confirmed the Teſtimony of the two laſt.

Mr. *Fallas* depoſed, That on *Saturday*, the 31ſt of *Auguſt*, 78, he was hunting with Mr. *Ireland* in Mr. *Gerrard*'s Park and they killed a Buck.

Other Witneſſes depoſed, They ſaw Mr. *Ireland* at Dinner at Mr. *Gerrard*'s, on the 1ſt of *September* 78.

Other Witneſſes depoſed they ſaw *Ireland* at Dinner at Mrs. *Crompton*'s Houſe at *Millage* in *Staffordſhire*, on *Monday* the ſecond of *September*, 78.

Mr. *Pendrel*, and Mrs. *Pendrel*, depoſed, That Mr. *Ireland* came to their Houſe, at *Boſcobel* in *Staffordſhire*, the 2d of *September* 78, and went from thence the 4th of *September*.

The King's Evidence being finiſhed, Mr. *Oates* proceeded in his Defence, and ſaid,

Mr. Oates's *Obſervations on the King's Evidence.*

I am not the only Evidence of Mr. *Ireland*'s being in Town in the Month of *Auguſt*; nor the only Witneſs that he was in Town about the Time I mentioned in *September*.

My Lord, the firſt Thing I ſhall offer to your Conſideration is, the Hardſhip I lie under, of being put to diſprove what the King's Counſel now charge me with, after ſix Years Time. Now, Why has the Proſecution of this pretended Perjury been delayed ſo long? When it appears, the Witneſſes to prove it were known ſix Years ſince; and there has been no new Fact diſcovered that was not then known: There is no Reaſon can be aſſigned for this Delay, but to render it the more difficult for me to maintain the Evidence I then gave, ſo many Perſons being ſince dead, or gone beyond the Seas; and many things that were then freſh, now grown out of Memory: And if ſuch Practice is to be admitted, no Witneſs is ſafe in giving his Teſtimony againſt a Conſpirator.

And here, my Lord, is only a bare Point of Time upon which this Perjury is aſſigned; the Subſtance of the Evidence, I gave at the Trial of Mr. *Ireland*, and the reſt, about the Popiſh Plot, is not pretended to be diſproved: Let it be remembred, that *Ireland* was convicted of a treaſonable Reſolution to murder the late King, and not for being in Town in *Auguſt* or *September*, 78; which is the Perjury now aſſigned. And, my Lord, 'tis unreaſonable to tie up Witneſſes, who come to diſcover Conſpiracies, to ſpeak poſitively to every little Circumſtance of Time and Place, and ſuch Niceties; it is uſual to ſpeak with Latitude in thoſe Caſes; and, I believe, I did not confine my ſelf either to the 1ſt or 2d, 5th, 6th, 7th or 8th; but my Lord, that he was in *September* there, I am poſitive; therefore I muſt beg the Opinion of the Court, Whether Mr. *Foſter* did prove I was poſitive to the 1ſt and 2d Days of *September*, 78.

L. C. J. The Evidence is plain, that you did ſwear poſitively to thoſe two Days, and mentioned this material Circumſtance to confirm it, That either the 1ſt or 2d of *September*,

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ber you received 20 Shillings of him in Town. Now, that Circumſtance of his Kindneſs, was not a Circumſtance either of Time or Place.

Oates. Then, my Lord, the firſt thing I ſhall offer, is the Record of Mr. *Ireland*'s Conviction of High Treaſon.

L. C. J. It is admitted, of all Sides, that *Ireland* was convicted and attainted of Treaſon.

Oates. Then, my Lord, let it be obſerved, that the principal Part of Mr. *Ireland*'s Defence, was an Endeavour to prove, he was not in Town between the 8th and 12th of *Auguſt*, nor the 1ſt or 2d Days of *September*, which are the Times now in Iſſue; and to prove this, Mr. *Gifford* and his Siſter and Mother were produced at Mr. *Ireland*'s Trial; and Mr. *Whitebread*'s Trial being ſix Months after he endeavoured alſo to prove, that Mr. *Ireland* was out of Town at thoſe Times, and produced Mr. *Gifford*, and ſeveral other Witneſſes, to prove it, to the Number of ſixteen: And, notwithſtanding all thoſe Witneſſes, the Jurors who tried Mr. *Ireland*, and the Jurors who tried Mr. *Whitebread* and the other four Jeſuits, found them all Guilty. And my Lord Chief Juſtice *Scroggs* obſerved, That the Priſoner's Defence conſiſted only in catching at a Point of Time; and that it was moſt plain, a villainous Plot was diſcovered: All which ſhews the Fullneſs and Satisfactorineſs of the Proof given by me and *Bedloe*. And, I muſt further obſerve, That though Mr. *Ireland*, by his falſe Witneſſes, preſſed this Matter as far as he could then, yet, when the Jury brought him in Guilty, the Chief Juſtice expreſſed the Satisfaction of the Court, and ſaid, Gentlemen, You have done like very good Chriſtians, that is, like very good Proteſtants. And, at the Trial of the five Jeſuits, the Chief Juſtice ſays, That the Jeſuits were very exact at catching at a Point of Time; but that was a thing which no Man could preciſely charge his Memory withal; and therefore perſuades the Jury, that That ſhould not be too ſtrictly the Meaſure of their Judgments about Truth and Falſhood, (the miſtake of 7 or 8 Days); and that they were not to lay too great a Weight upon the Point of Time: Now if too great a Weight be not to be laid upon a Point of Time, then this Charge againſt me is of no Weight at all. Beſides, my Lord, it ought to be conſidered, That if this were the great Objection then, and then anſwered, it ceaſes to be an Objection now.

I ſhall offer the Teſtimony of Mr. *Bedloe*, who is dead, and at his Death confirmed all that he had ſworn of the Popiſh Plot to be true; and affirmed, he had rather ſpoken leſs than the Truth, than more: And to this I deſire my Lord Keeper may be called, who took his Examination.

L. C. J. It is very well known to the World, and particularly to a worthy Gentleman who ſits by you, (pointing to Mr. *North*) That Mr. *Bedloe*, when he was ſick, did make ſome ſuch Proteſtations.

Then Mr. *Blaney* was ſworn.

Oates. Pray, Mr. *Blaney*, ſee in your Notes of *Ireland*'s Trial, if *Bedloe* did not ſwear, that Mr. *Ireland* was in Town the latter end of *Auguſt*, 78.

Mr. *Blaney* He ſaid it was in *Auguſt*: He would not be poſitive to a Day; but he thought it the latter end.

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Oates. Then, my Lord, I deſire Mr. *Jenniſon*'s Depoſition of Mr. *Ireland*'s being in Town, taken before Sir *Edmund Warcup*, I may call ſome Witneſſes to make Proof of.

L. C. J. We cannot admit that in Evidence, unleſs the King's Counſel will conſent.

Oates. Then I ſhall prove what he ſwore at another Trial.

L. C. J. Why, is he dead?

Oates. It has coſt me a great deal of Money to ſearch for him, but I cannot hear of him.

L. C. J. Though in Strictneſs, we ſhould not admit ſuch Evidence, unleſs the Party be dead; yet, if you can prove any thing he ſwore at another Trial, we will indulge you ſo far.

Oates. Have you the Record of Sir *George Wakeman*'s Trial, Sir *Samuel Aſtry*?

L. C. J. Put it in: And now, Mr. *Oates*, prove what you can.

Then Mr. *Oates* demanded of Mr. *Blaney*, If he could remember what *Jenniſon* ſwore at that Trial; but Mr. *Blaney* could remember nothing of it.

Mr. *Oates* deſired Sir *Edmund Warcup* might be examined about the Depoſition he took of *Jenniſon*, concerning *Ireland*'s being in Town the 19th of *Auguſt*: Which the King's Counſel ſaid they would conſent to, if *Oates* would admit *Jenniſon*'s Letter under his Hand to be read, wherein he owned he was miſtaken in his whole Evidence about that Matter.

To which Mr. *Oates* conſented; and Sir *Edmund Warcup* was examined; but he ſaid, he had delivered the Depoſition to the King and Council, and could not remember the Particulars.

Then Mr. *Oates* called *Sarah Batten*.

He demanded of her, If her Name was not *Pain* formerly; and, if ſhe did not give Evidence at Mr. *Ireland*'s Trial? But it appearing he was miſtaken in the Perſon, he examined her no further.

Mr. *Oates* called Mr. *Percival*, Mr. *Vaughan*, Sir *Michael Wharton*, and ſeveral others; but they did not appear: He ſaid he had ſerved them all with *Subpœna*'s, but they would not come; and then he proceeded in his Defence.

His further Defence.

My Lord, Both *Bedloe* and *Sarah Pain* have ſworn, That *Ireland* was in Town in *Auguſt*, as well as my ſelf; and, I think, I am hardly uſed, that after Witneſſes are dead, or gone out of the Way, I ſhould have ſuch a Part of my Teſtimony called in Queſtion. *Jenniſon*'s Evidence has formerly been made uſe of, and approved, as is well known to thoſe who ſat *Judges* upon my Lord Viſcount *Stafford*. And, my Lord, as I hope for Salvation, all that I have ſworn about Mr. *Ireland*'s being in Town, between the 8th and 12th of *Auguſt*, 78, and the Beginning of *September*, is true; and though there are a great many Witneſſes produced againſt me this Day a great Part of them do not come up to the 8th or 12th of *Auguſt*: And, I deſire your Lordſhip will remark to the Jury, what little Credit theſe Witneſſes had at the Trials of *Ireland* and the five Jeſuits: And, I believe, I am the firſt Precedent, of a Perſon's

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being indicted for Perjury, for being a Witneſs for the King, in ſuch a Caſe as this, after ſix Years elapſed, and Verdict upon Verdict, and Judgment and Execution upon thoſe Verdicts; and when no new Objection is offered, but what was then urged; and no Circumſtance occurs now, but what was as concluſive then, unleſs the Change of the Seaſon. And at thoſe Trials all the Judges of *England* were Commiſſioners of *Oyer* and *Terminer*; and fully debated and diſcuſſed theſe Matters, and ſaw all theſe Objections fully anſwered and confuted. Had I been Witneſs in any Cauſe but a Popiſh Conſpiracy, I had met with fairer Quarter: But at this Rate, it is ſafer for a Papiſt to be a Traitor, than for a Proteſtant to diſcover a Popiſh Plot. I hope you will conſider my Witneſſes are either in Places unknown, or, are ſuch as, conſidering the Times, dare not appear; yet, I hope, you that are ſworn to do Juſtice, will not ſuffer me to be ruined, by the falſe Teſtimony of the Papiſts, who are Parties; for they have a Turn to ſerve, and are reſolved to wreck their Vengeance upon me: Now they have Hopes of bringing in their Religion, and would welcome it with my Ruin: Their Eyes now ſee what their Hearts ſo long have wiſhed, the Death of a great Man, who died lately, and againſt whoſe Life they ſo often and ſo long conſpired. Had this been their firſt Conſpiracy, the Truth of it might have been diſputed; but if you caſt your Eyes upon the Reigns of Queen *Elizabeth*, King *James*, and King *Charles*, what can be averred againſt thoſe numerous Records of their Conſpiracies? And then ſurely, my Diſcovery will not be deemed ſo improbable a Thing. And I hope the Jury will conſider, That the Men who are Witneſſes againſt me, their very Religion is Rebellion; and their Principles and Practices pernicious to our Government. And, my Lord, if *Coleman*'s Correſpondence with *La Chaiſe*, the *French* King's Confeſſor, for promoting Popery in *England*, be conſidered, it is a Demonſtration of the Plot, and ſufficiently vindicates me. --- My Lord, I have a Favour to beg: I had but an ill Night, and am now in great Pain; I deſire you would aſſign me Counſel to argue the Errors in Yeſterday's Indictment; and give me a Week's Time to prepare and inſtruct my Counſel: To which the Court agreed; but told him, by the Rules of the Court, he ought to have but four Days. Then he deſired he might have Liberty to withdraw; to which alſo the Court agreed.

Mr. Solicitor's Reply.

Then Mr. Solicitor proceeded to make his Obſervations on the Evidence, and the Priſoner's Defence, and ſaid,

Gentlemen of the Jury, you have ſeen between forty and fifty Witneſſes produced, to ſhew that it is impoſſible, that what *Oates* did ſwear can be true: He ſays, indeed, that this is in a Circumſtance of Time wherein it is difficult for a Man to be poſitive to a Day; and that, it is uſual with Witneſſes, in Points of Time, to ſwear with a Latitude: But Gentlemen, ſhould we grant this falſe Doctrine to be true, (and falſe certainly it is, and of moſt pernicious Conſequence it muſt be, if, when Men are charged with Things that depend upon Time and Place, the Witneſſes ſhould not be kept to thoſe Circumſtances) yet this, I ſay, if granted, can do no manner of Service in the Caſe before you: For between the 3d of *Auguſt* and 14th of *September*, which includes both Times he ſwears to, and gives him a Latitude of above twenty Days beſides, there is not a Moment of Time wherein his Oath can be true.

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Gentlemen, you have obſerved how the Witneſſes have given you an Account of every particular Day of both Months, from the 3d of *Auguſt*, that Mr. *Ireland* left *London*, to the 14th of *September*, when he returned thither again. And, that their Teſtimony might the more evidently appear to be true, they have given you ſuch remarkable Circumſtances, why they remembred the particular Times they ſwear to, as renders it impoſſible they can be miſtaken. *Then Mr. Solicitor ſummed up the Evidence: that had been given; after which he proceeds:* And now let the World judge, if there be any Room left to ſuppoſe, that any one Word Mr. *Oates* has depoſed can be true; even allowing him that Latitude of Time he deſires, and ſays all Witneſſes ought to be allowed: No, there is not a Moment wherein he can verify one Tittle of his Evidence, as to *Ireland*'s being in Town; and this ſure, I may call Demonſtration, that what *Oates* has ſworn is utterly falſe. Gentlemen, the Jury that tried *Ireland* had not this Evidence: Indeed, ſome that went out of Town with him, and one or two from *Wolverhampton*, were at the Trial of the five Jeſuits; but not more than five or ſix in all of the forty odd that now appear; and for want of theſe, *Ireland* unfortunately ſuffered: For ſo, I ſhall take leave to ſay, it was unfortunately.

And there is one Thing Mr. *Oates* lays great Streſs upon, and would have you think he is hardly dealt with; becauſe this Proſecution has been ſo long delayed. --- But, Gentlemen, with Sorrow we muſt remember, that there was a Time when the City of *London* was ſo corrupted, that it was made a Refuge and a Sanctuary for High-Treaſon: When the King could have no Juſtice there, and Men lodged themſelves within thoſe Walls as a Protection for their Conſpiracies. The Time has been, when Indictments were preferred, and the moſt convincing Evidence given the Grand Jury, even to the Satisfaction of all who heard it, and yet they have refuſed to find the Bill; and not only ſo, but they were ſo abetted by the Rabble, that it was ſcarce ſafe for a Judge to ſit upon the Bench; and therefore it is no Wonder an Indictment was not preferred againſt *Oates* at that Time, when the plaineſt Proof againſt ſuch Criminals could not be admitted. This may give ſufficient Satisfaction Why it has been delayed; and may caution every Man, how they fall into the ſame Circumſtances again.

But Gentlemen, you have heard the Evidence to prove this Fact: And it is plain to a Demonſtration, If you believe that Mr. *Ireland* was ſeen by theſe People at all, he was ſeen at thoſe very Times they have particularly declared: For, upon Conſideration of the Circumſtances, it is impoſſible it ſhould be at any other Times: And ſo I leave it to you to conſider, whether the Defendant be perjured, or not.

Then

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The Chief Juſtice directs the Jury.

Then the Chief Juſtice proceeded to direct the Jury, and obſerved, That every Perſon that had been executed for the Popiſh Plot, truly called *Oates*'s Plot, had to a Man denied it at their Deaths; and took it upon their Salvations they were innocent: Whereas, there was not a Man concerned in the *Rye-Houſe* Plot, who had the Confidence to deny it at his Execution: And as to Mr. *Oates*'s Inſinuation, That it was hard he ſhould be brought to Trial, after ſo much Time elapſed; ſuch were the Misfortunes of thoſe Times, when theſe Perjuries were committed, that even the Fountain of Mercy itſelf was ſtopped; and even that compaſſionate Prince King *Charles* II. was compelled to permit the Execution of *Ireland*, againſt his Inclinations, rather than give Diſturbance to his People; there having been a Verdict and Judgment in the Caſe: But it was well known by them that were near his Perſon, how often he expreſſed his Concern for having conſented to this Execution; and that he reflected on it with Regret to his dying Day, as his Royal Father did on the Buſineſs of my Lord *Strafford:* Nor ought theſe Things to be remembered as a Reflection on the Memory of thoſe Princes, but with Infamy to thoſe who were the Cauſes of them. Unhappy was it for the Prince, when the Times were ſo tumultuous, that he was compelled to reſtrain his Mercy, where he thought it due, rather than ſeem to ſtop the Current of Juſtice: And as to *Oates*'s Objection, that the Witneſſes were Papiſts, it happened that ſeven or eight of them were Proteſtants: Not but he thought Roman Catholicks good Witneſſes in Point of Law: And he was ſatisfied, Lying was as much the Talent of a Presbyterian, as it could be of a Papiſt. Nay (it was as inſeparably incident to a Presbyterian) and ſuch ſniveling, canting, whining Knaves, to lye, as it was to ſpeak: That *Oates* mightily inſiſted, that, becauſe he was believed before, it would caſt a Reflection on former Juries to disbelieve him now: But if that Opinion was to prevail, it were impoſſible Perjury could ever be detected. The Nation was then in a Hurry and Surprize; and it was not then ſuppoſed there could be ſuch Villains upon Earth, as impudently to ſwear High-Treaſon againſt their Fellow-Subjects, when there was no Truth in the Accuſation. But the Eyes of all honeſt Men were now opened: They had ſeen the Effects of their Credulity; and it concerned them to ſhew their Reſentment to the World. *And having ſummed up the Evidence, he concluded in this Manner:* It is incumbent on you, Gentlemen, to try theſe Facts according to your Evidence; and it is incumbent on us, who ſit here as Judges, to ſee the Law executed. And God forbid, but we ſhould uſe our utmoſt Endeavours to inflict the greateſt Vengeance, that the Juſtice of the Nation can permit us to inflict upon ſuch Villains, who have contracted ſo much Miſchief and Reproach on us, and ſo much Guilt upon themſelves.

Oates convicted.

The Jury withdrawing, returned in half an Hour, and gave a Verdict, that the Priſoner was GUILTY.

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Mr. *Oates*'s Counſel afterwards moving in Arreſt of Judgment, was allowed a conſiderable Time to prepare his Exceptions to the Indictment; and being brought into Court on the 26th of *May*, Mr. Attorney ſaid, that four Exceptions were delivered to him the Night before by Mr. *Wallop*; but neither Mr. *Wallop*, nor any of the Defendants Counſel, thought fit to argue them. The Exceptions were theſe:

His Exceptions to the Indictment.

1. That a Witneſs ſworn on Behalf of the King in a Proceſs of High-Treaſon, cannot be puniſhed for Perjury by the King.

2. That it does not appear, that the Indictments of *Ireland*, &c. found in *Middleſex*, were legally tranſmitted into *London*; and conſequently, all the Proceedings thereupon, were *coram non Judice.*

3. That the Perjuries aſſigned, are foreign to the Iſſue.

4. It is *Reſolutio Signat'* in that Part of the Indictment, that mentions what the Defendant ſwore; and in the Perjury aſſigned, it is *Reſolutio ſignand'*; which is no good Aſſignment of the Perjury.

anſwered.

To theſe Exceptions it was anſwered by Mr. Attorney and the Court.

1. That the firſt Exception was a plain Miſtake of the Indictment; for the Defendant was not indicted upon the Statute; And, at Common Law, he might be proſecuted for the King, though he was a Witneſs for the King before: And that, if Witneſſes, who came and forſwore themſelves to take away Mens Lives, could not be called in Queſtion Criminally for the King, (at whoſe Suit only, a Man could be proſecuted for his Life, unleſs in Caſe of Appeals) it would be an Encouragement to Villany, and make the Proceſs of Law to become an Inſtrument of the greateſt Cruelty in the World.

2. As to the ſecond Exception, That it did not appear, *Ireland*'s Indictment, &c. was well tranſmitted from *Middleſex* to *London*, that was well enough; for it being recited they were ſo, and ſo indicted, it ſets forth, That the Trials were had upon Records there depending, before the Commiſſioner of *Oyer* and *Terminer*, and *Goal-Delivery:* And it ſhall be intended, that they were well brought before them.

3. That as to the third Exception, That the Perjuries aſſigned were foreign to the Matters in Iſſue; it was apparent, that one of the Indictments was in the expreſs Points of the great Treaſon charged againſt them, *viz.* The Conſult on the 24th of *April.* And that for the other, the Time was very material; becauſe it was impoſſible that *Ireland* could be Guilty of the Treaſon ſworn againſt him at his Chamber in *Ruſſel-ſtreet*, between the 8th and 12th of *Auguſt*, if he were not then in Town. Nor could he be privy to the Treaſon ſworn by *Bedloe*, the latter End of *Auguſt*, or the Beginning of *September* in *Harcourt*'s Chamber, if he were out of Town from the 3d of *Auguſt*, to the 14th of *September.*

4. To the fourth Exception, That he ſwore he ſaw them ſign it, and the Perjury aſſigned is, that he did not carry it to be ſigned; they anſwered,

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anſwered, That it was alledged, that he falſly and corruptly ſwore that he was preſent; and that he carried the Reſolution to be ſigned, and ſaw them ſign the Reſolution. Now, 1. It is ſaid he was not there. 2. He carried no ſuch Reſolution to be ſigned; and that there was no Occaſion to ſay he did not ſee it ſigned; for, if he was not there, nor did carry it, he could not ſee them ſign it. Beſides that, if any one Part of the Oath he ſwore proved falſe, that was ſufficient to maintain the Verdict; but here it was notoriouſly plain, that it was falſe throughout.-----And my Lord Chief Juſtice ſaid, That all the Judges of *England* had been conſulted, That if the Law would admit of it, he might receive ſuch a Judgment for this Offence, as might be adequate to the Crime, and deter others from committing the like again.

That by the ancient Laws of *England*, Perjury was puniſhed with Death: That, afterwards, it was puniſhed by cutting out the Tongue. And now, by the unanimous Opinions of all the twelve Judges, it was reſolved, that by the Law, Crimes of this Nature were left to be puniſhed according to the Diſcretion of this Court, provided ſuch Judgment extend not to Life or Member.

Then, the Judges having conſulted together, Mr. Juſtice *Wythens* pronounced the Sentence, *viz.*

That the Defendant ſhould pay 1000 Marks upon each Indictment: That he ſhould be ſtripped of his Canonical Habits: That he ſhould ſtand in the Pillory before *Weſtminſter-Hall* Gate, on the *Monday* following, for an Hour, with a Paper over his Head, declaring his Crime; but that, firſt, he ſhould walk with it round all the Courts in the Hall.

On the ſecond Indictment, the Judgment was, That he ſhould ſtand in the Pillory, the *Tueſday* following, at the *Royal-Exchange*: That the next *Wedneſday*, he ſhould be whipped from *Aldgate* to *Newgate*; and on the *Friday* following, he ſhould be whipped from *Newgate* to *Tyburn*, by the Hands of the Common Hangman: That the 9th of *Auguſt*, every Year of his Life, he ſhould ſtand in the Pillory before *Weſtminſter-Hall* Gate; the 10th of *Auguſt* at *Charing-Croſs*; and the 11th, over-againſt the *Temple*; and the 2d of *September*, at the *Royal-Exchange*; and on the 24th of *April*, every Year, at *Tyburn*.

Remarks on the two Trials of Oates *for Perjury.*

Biſhop *Burnet* ſeems to be one of thoſe who believed the Popiſh Plot, in Part, and yet did not give much Credit to *Oates*'s Teſtimony; but rather thinks he was perjured in ſome Particulars as appears from his firſt Volume of Poſthumous Hiſtory. In the Character he gives *Oates*, he ſays,

He was an ignorant Man; proud, ill-natured, and haughty; and Complaints had been exhibited againſt him, for very indecent Expreſſions concerning the Myſteries of Chriſtianity. He had been alſo preſented for Perjury (before the Popiſh Plot was heard of), and, being Chaplain to a Man of War, was diſmiſſed upon Complaint of ſome very Unnatural Practices, not to be named. That being admitted Chaplain to the Duke of *Norfolk*, and diſcovering an Inclination to Popery, *Hutchinſon*, a Jeſuit of that Family, had the Honour of his Converſion. That *Hutchinſon* told him, (the Biſhop) that *Oates* was in ill Terms with the Jeſuits: They allowed him but nine Pence a Day, of which he complained, and *Hutchinſon* often relieved him: That the Jeſuits wanting to get rid of *Oates*, ſent him beyond Sea, *&c.*

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In another Part of that Hiſtory, the Biſhop relates, That *Oates* came to him, and ſaid, He was one of them that was marked out to be killed; and the ſame Compliment he had paid to *Stillingfleet* before; but he thought he made that Honour too cheap, when he told them *Tongue* was to be ſerv'd in the ſame Manner: That the ſame Time *Oates* broke out into a mighty Fury againſt the Jeſuits, and ſaid, *He would have their Blood:* And he (Dr. *Burnet*), to divert him, demanding What it was that prevailed on him to change his Religion, and turn Papiſt? *Oates* ſtood up, and laying his Hands on his Breaſt, ſaid, *God and his holy Angels knew he never changed, but went amongſt them on Purpoſe to betray them:* Which (the Biſhop ſays) gave him ſuch a Character of *Oates*, *That he never after gave any Regard to what he ſaid, or ſwore.*

The Authors of *Rapin*, on the other Hand, though they profeſs the greateſt Veneration for Biſhop *Burnet*; and ſometimes inſinuate, that the Facts related by that illuſtrious Hiſtorian (as they call him) ought to be received without Heſitation, by all Mankind; take the Liberty here to contradict him, and pay no Regard to the Opinion he had conceived of *Oates*. They do not only ſay, that the Sentence, and the Execution of it, was barbarous; but affirm it to be miraculous, that *Oates* eſcaped with his Life, after ſo ſevere a Whipping; from whence, I preſume, they would have us infer, that Heaven wrought a Miracle, to aſſert the Innocence of the Man, and the Juſtice of his Cauſe.

But ſurely the Compilers of *Rapin*, if they had not been partial to *Oates*, would have given us Biſhop *Burnet*'s Opinion of him, on whoſe Authority they rely abſolutely in other Caſes; nor would they have repreſented ſome Parts of the Evidence againſt *Oates*, as they do; particularly where they inſinuate, that the Witneſſes from *St. Omers were the very ſame*, that had appeared and given *the ſame Evidence* at the Jeſuits Trials: Whereas ſeveral of thoſe Witneſſes were not the ſame; and there were a great many more, and other Witneſſes from *St. Omers* at this Trial, than were at the Trials of the Jeſuits; and their Teſtimony differed in ſeveral Circumſtances: And this the Authors of *Rapin* could not but know, as they appear to have peruſed all thoſe Trials. To ſuch Lengths will Party carry ſome People, to aſſert downright Falſities, and hazard their Reputation to ſuch a Degree, as to render all the other Facts they relate ſuſpected!

But that which muſt ſatisfy all the World, that both Houſes of Parliament, even after the Revolution, were convinced that *Oates* was guilty of the Perjuries wherewith he was charged, is, That when he applied to them to get the Judgment againſt him reverſed, they refuſed it, and he remained perjured upon Record

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cord to his dying Day; though the Miniſtry thought fit to allow him three hundred Pounds *per Annum* for his Life, becauſe ſome People imagined he was inſtrumental in the Revolution.

And notwithſtanding the Authors of *Rapin* think the Puniſhment was too ſevere, Biſhop *Burnet*, whoſe Authority they rely upon in other Caſes, ſays, he thought it too little, if he was guilty; intimating, that nothing leſs than his Life could atone for the many Murders he had committed by his Perjuries.

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Liſle's *Trial.*

The Trial of ALICE LISLE, Widow, for *High-Treaſon*, before the Lord Chief Juſtice *Jeffries*, the Lord Chief Baron, and other Commiſſioners of *Oyer* and *Terminer*, held at the City of *Wincheſter*, for the County of *Southampton*, on the 27th of *Auguſt*, 1685. 1 *Jac.* II.

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The Indictment.

THE Indictment charges, That *Alice Liſle*, of the Pariſh of *Ellingham* in the County of *Southampton*, Widow, did, on the twenty-eighth Day of *July*, in the firſt Year of the King, intend to depoſe and put his Majeſty to Death; and the Overt-Act, laid as an Evidence of this, was, that ſhe, the ſaid *Alice Liſle*, well knowing one *John Hicks* of *Keinſham* in the County of *Somerſet*, Clerk, to be a falſe Traitor, and to have traitorouſly conſpired the Death of the King, and raiſed War and Rebellion againſt him, did, at her Dwelling-Houſe in *Ellingham* aforeſaid, entertain, conceal, and comfort, the ſaid *John Hicks*, and gave him Meat and Drink, againſt the Duty of her Allegiance, *&c.*

Pollexfen *opens the Evidence.*

Mr. *Pollexfen*, of Counſel for the King, in opening the Evidence, obſerved, That the Priſoner *Alice Liſle*, was the Widow of one *Liſle* ſufficiently known, being one of the Regicides that ſat in Judgment againſt King *Charles* I. and afterwards condemned the Lord *Capel*, *&c.)* That the Perſon ſhe was charged with entertaining, was a Conventicle-Preacher, and one of the moſt active in *Monmouth*'s late Rebellion, being perſonally in the Battel, and perſuading and inciting others to join with the Rebels.

The Witneſſes being called, Mr. *Pope*, Mr. *Fitzherbert*, and Mr. *Taylor*, were ſworn; who depoſed, That being taken Priſoners by the Rebels, Mr. *Hicks* came to them, and would have perſuaded them to have been of that Party; telling them that *Monmouth* was a good King, and a Proteſtant, and a great deal to that Purpoſe; reflecting on the Government and the Perſon of the King; and ſaying, He wondered what they (the Priſoners) could ſay for themſelves, who being Proteſtants, ſerved a Popiſh Prince, and would not obey a Proteſtant King; or to that Effect.

Then *James Dunne*, a Baker, was ſworn, who depoſed that a ſhort black Man came to his Houſe at *Warminſter* in *Wiltſhire*, and deſired him to go on a Meſſage to Mrs. *Liſle*'s at *Ellingham* in *Hampſhire*, being about thirty Miles from *Warminſter*; and the Subſtance of his Meſſage was, to enquire of Mrs. *Liſle*, whether ſhe would entertain one *Hicks*: That he went to *Ellingham* accordingly on the *Saturday*, and met with one *Carpenter* the Lady's Bailiff; and asking him, if his Lady would entertain *Hicks*? *Carpenter* ſaid, He would have nothing to do with it; and thereupon he (the Witneſs) went to Mrs. *Liſle*, and asked her the Queſtion; and ſhe anſwered, He ſhould tell the Man, that they ſhould come the *Tueſday* following, in the Evening, and ſhe would entertain him: That he thereupon came back to his Houſe, and returned this Anſwer to the Man that employed him to go to Mrs. *Liſle*'s.

Dunne being asked, If there were one or two Men that came to his Houſe, to enquire what the Lady ſaid? he anſwered, There were three in all: There was the little black Man, that brought the Meſſage firſt, and two more; one was a fat black Man *(Hicks)* and the other was a thin black Man *(Nelthorp:)* That they ſtaid at his Houſe about three or four Hours; *viz.* from ſeven to eleven, on the *Saturday* Morning, and then they all ſet out together on Horſeback to go to Mrs. *Liſle*'s: That they went through *Deverel*, *Chilmark*, and *Sutton*, and came to *Salisbury-Plain*; and not knowing the Way further, he hired one *Barter* to be their Guide.

It being demanded, How he came not to know the Way, when he went to the Lady's Houſe but the *Saturday* before?

He anſwered, The ſame *Barter* was his Guide the *Saturday* before, and had appointed to meet him again at the Plain the *Tueſday* following, and conduct him and his Friends to the Lady *Liſle*'s Houſe, *(Moyle's-Court)* at *Ellingham:* That they did not go the ſame Way to the Lady's the laſt Time, as they did the firſt, the Gentlemen being unwilling to go that Way, and ſo they went a good Way about.

Being asked what Reward they gave *Barter* for his Pains? *Dunne* anſwered, He gave *Barter* half a Crown the firſt Time, and the fat black Man gave him a Crown the laſt Time; and they parted with *Barter*, before they came to Mrs. *Liſle*'s Houſe, having got another Guide.

It being demanded, If he did not ask the Gentlemen the Reaſon they deſired to be concealed, and to go to the Lady's privately? He ſaid, Yes; and that the fat Man anſwered him, they were in Debt: That he came to the Lady *Liſle*'s Houſe with the Gentlemen, and put his Horſe in the Stable; but the Gentlemen alighted at the Gate, and what became of their Horſes he could not tell, it being dark: That he ſaw nobody at the Houſe till next Morning, but *Carpenter* the Lady's Bailiff, who came with a Candle and Lanthorn, and gave his Horſe Hay; and a young

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Girl that ſhewed him *(Dunne)* the Way to his Chamber: That he neither eat nor drank in the Houſe, only ſome Cake he carried in his Pocket.

This he averred in the moſt ſolemn Manner, upon his Oath ſeveral Times; but being ſtrictly examined by the Chief Juſtice, after the other Witneſſes had given ſomeLight into the Matter, he acknowledged, That it was *Hicks* that employed him to go to the Priſoner's, the Lady *Liſle*'s Houſe, to know whether ſhe would entertain him: That the Lady asked him, Whether *Hicks* had been in the Army, or not? And he told her, He did not know that he was; and ſhe replied, They might come: That when they came to the Lady *Liſle*'s on *Tueſday* Night, ſome-body took the Gentlemen's Horſes at the Gate, and they went in; and when he *(Dunne)* had put up his Horſe, he went up with *Carpenter* to the Lady's Chamber, where were both *Hicks* and *Nelthorp:* That he heard the Lady bid them Welcome to her Houſe; and either *Carpenter* or the Maid brought up the Supper; and he *(Dunne)* eat and drank with them. It being demanded, What Diſcourſe they had at the Table? He ſaid, at firſt, he could not remember; but, at length, he ſaid there was ſome Diſcourſe about *Nelthorp*, who went by the Name of *Crofts*, but he thought he was called *Nelthorp* in the Chamber; adding, *That the Lady asked* Hicks, *Who that Gentleman was? and he ſaid it was* Nelthorp, *as he remembered.*

The Chief Juſtice demanded, *If there was no Diſcourſe about the Battel, and of their being in the Army?*

Dunne anſwered, *There was ſome ſuch Diſcourſe.*

The Chief Juſtice asking again, What the Diſcourſe was? *Dunne* replied, *They did talk of Fighting*; but he could not exactly tell what the Diſcourſe was.

Barter being ſworn, depoſed, That he ſhewed *Dunne* the Way to the Lady *Liſle*'s Houſe, at *Moyle*'s-*Court*, on the *Saturday:* That he met him the *Tueſday* after with two Gentlemen, and conducted them towards *Moyle's-Court*; but deſiring to go a more private Way than he knew, they got another Guide, and diſmiſſed him; whereupon he went to Colonel *Penruddock*'s, and informed him that the Men were gone to the Lady *Liſle*'s Houſe: For he had acquainted the Colonel the Day before, that *Dunne* had deſired him to conduct two Men thither on the *Tueſday*, whom he ſuſpected to be Rebels; and the Colonel had agreed to take them on the Plain; but they going another Way, he apprehended them the next Morning at the Lady's Houſe.

That when this Witneſs *(Barter)* came to *Moyle's-Court* with *Dunne* on the *Saturday*, *Dunne* produced a Letter, but *Carpenter* the Bailiff would not meddle with it; and he ſuppoſed *Dunne* gave it to the Lady himſelf: That the Lady came out into the Kitchen, and asked them ſeveral Queſtions; and talking with *Dunne* apart, ſhe laughed; and he *(Barter)* asking *Dunne* as they went Home, what ſhe laugh'd at? *Dunne* anſwer'd, She ask'd him, If he *(Barter)* knew any Thing of the Concern; and he anſwering, No, ſhe laughed.

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Being asked, What Diſcourſe he had with *Dunne*, the firſt Day he went to Mrs. *Liſle*'s, *Barter* anſwered, He told him the Men had half a ſcore thouſand Pounds a Year a-piece: That he *(Dunne)* ſhould make a very fine Booty of it; he ſhould never want Money again; and that he had concealed the Men in his Houſe ten Days: But *Dunne* denied he ever concealed them, or ſaid any Thing about the Value of their Eſtates, or that ever he produced a Letter at the Lady *Liſle*'s, but delivered his Meſſage by Word of Mouth: And ſaid, the Queſtion the Lady asked him was, Whether *Barter* knew *Hicks* was a Presbyterian Preacher?

Colonel *Penruddock* being ſworn, depoſed as follows: *Barter* came to my Houſe on the *Monday* Morning, and told me he had been with one *Dunne*, upon a Journey to Mrs. *Liſle*'s Houſe, to get Entertainment for ſome People; and that they had appointed to meet him the *Tueſday* following, between Eleven and Twelve upon *Salisbury-Plain*; and there, if I pleaſed, I might take them. I ordered him to go according to the appointed Time, and withal I ſent a Servant of my own, to watch when they came by; but it happened, I ſuppoſe, by their taking another Way, that he miſſed of them; but *Barter* left Word, that in caſe he did not find them there, we muſt conclude he was gone with them to my Lady *Liſle*'s Houſe: And he told me withall, ſays he, I believe they are Rebels, becauſe he that deſired me to be their Guide, ſaid the ſame to me: So, early the next Morning I took ſome Soldiers with me, and beſet my Lady *Liſle*'s Houſe: It was a pretty while before I could get any body in the Houſe to hear: At length that Man that they ſay was the Bailiff, *Carpenter*, came out; and I ſaid to him, Friend, you had beſt be free and ingenuous, and diſcover who are in your Lady's Houſe; for I am ſure there were ſome Strangers came thither laſt Night: Let me know who they are, and ſhew me what Part of the Houſe they are in? He did confeſs to me there were Strangers in the Houſe, and pointed to ſuch a Part of the Houſe: But pray, ſays he, do not tell my Miſtreſs of it. Accordingly we went in, and immediately we took Mr. *Hicks* and this ſame *Dunne* in the Malt-houſe.

L. C. J. was *Dunne* taken in the Malt-houſe?

Col. *Penruddock.* Yes; he had covered himſelf with ſome Sort of Stuff there.

L. C. J. Well, what did you do then?

Col. *Penruddock.* My Lady coming to us, I told her, Madam, you have done very ill in harbouring Rebels, and giving Entertainment to the King's Enemies. Saith ſhe, I know nothing of them; I am a Stranger to it. Pray, ſaid I, Madam, be ſo free and ingenuous with me, and ſo kind to yourſelf, as, if there be any other Perſon that is concealed in any Part of your Houſe (for I am ſure there is ſome body elſe) to deliver him up, and you ſhall come to no further Trouble: She denied it, and ſaid, I know nothing of them; but he went on and ſearched; and at laſt diſcovered the other Man *Nelthorp*, hid in a Hole by the Chimney.

Dowding

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Dowding being ſworn, depoſed, That he was with Colonel *Penruddock* when he beſet the Lady *Liſle*'s Houſe: That they called almoſt half an Hour before they got in: That having found two Men, they came to the Lady; and ſhe ſaid, ſhe knew nothing of any Body's being in the Houſe; and that *Dunne* the Witneſs had covered himſelf up in a Hole in the Malt-Houſe: He depoſed further, That he ſaw *Hicks* at *Salisbury* the Day before this Trial; and that he acknowledged his being in the Duke of *Monmouth*'s Army.

Mrs. *Carpenter*, the Bailiff's Wife, being ſworn, depoſed, That the Night Mr. *Hicks* and Mr. *Nelthorp* came to her Lady's, ſhe dreſſed the Supper, and carried it up to their Chamber, and her Husband took the Diſhes of her at the Door; and that my Lady was there. It being asked if her Lady uſed to ſup below Stairs or above? She anſwered, Her Lady uſed to ſup below.

The Chief Juſtice demanding of *Carpenter* the Husband, If *Dunne* offered him a Letter for his Lady? He anſwered, No? *Dunne* asked him, if his Lady would give Entertainment to one *Hicks* and another Perſon; and he asked, who the other Perſon was? But *Dunne* ſaid, He did not know him.

The Chief Juſtice asking *Carpenter*, Where he ſaw the two Gentlemen? He ſaid, He ſaw them firſt in the Room, where they ſupped and lay; and that his Lady was there at Supper: But that he never heard *Nelthorp*'s Name mentioned, till after he was taken next Morning.

Mrs. Liſle's Defence.

Mrs. *Liſle* entering upon her Defence, ſaid, She did not know of any body's coming to her Houſe but *Hicks*; and had never heard that he was in the Army: She was informed he abſconded, and Warrants were out againſt him, for preaching at private Meetings; and for that Reaſon ſhe ſent to him to come at Night: As to *Nelthorp*, ſhe did not know who he was, till after he came into her Houſe: That ſhe abhorred both the Principles and Practices of the late Rebellion; ſhe ſhould have been the moſt ingrateful Perſon living, had ſhe acted any Thing againſt the preſent King, conſidering how much ſhe was obliged to him for her Eſtate: Had ſhe been tried in *London*, ſhe could have had my Lady *Abergavenny*, and ſeveral other Perſons of Quality, to have proved how much ſhe deteſted the late Rebellion, and ſpoke againſt it; for ſhe was all that Time at *London*, and ſtaid there till after the Duke of *Monmouth* was beheaded.

That ſhe was adviſed, and ſo ſhe thought it would have been, *That ſhe ſhould not have been tried as a Traitor for harbouring* Hicks, *till he was convicted of being a Traitor*: That ſhe did not know it was *Nelthorp* that came to her Houſe; had ſhe heard his Name, ſhe ſhould have remembred he was in a Proclamation. As to what had been teſtified, that ſhe denied *Nelthorp* to be in her Houſe; ſhe was then in a great Conſternation and Fear of the Soldiers, who were very rude, and could not be reſtrained by their Officers from robbing and plundering her Houſe. She begged the Court would not entertain an ill Opinion of her, becauſe of thoſe falſe Reports relating to the late King, as if ſhe was conſenting to the Death of King *Charles* I. for ſhe was not out of her Chamber that Day the King was beheaded, and believed ſhe ſhed more Tears for him than any Woman then living, as the Lady *Marlborough*, the Lord Chancellor *Hyde*, and twenty more, could teſtify, if they were living.

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That ſhe was come down into the Country but a Week, when *Dunne* came to her from Mr. *Hicks*, to know if he might be received at her Houſe; and ſhe told him he might come on *Tueſday* in the Evening, and he ſhould be welcome: That ſhe had no Intention to harbour him, but as a Nonconformiſt Miniſter; which ſhe knew was not Treaſon. It could not be imagined ſhe ſhould hazard her own Life, and the Ruin of her Children, to harbour *Nelthorp*, a Man ſhe never knew, but had heard he was in a Proclamation.

Then ſhe called *George Creed*, as a Witneſs for her; who teſtified, That he heard *Nelthorp* ſay, that the Lady *Liſle* (the Priſoner) did not know of his coming, or know his Name; nor did he tell his Name, till he was taken by *Penruddock*.

The Chief Juſtice anſwered, She was not indicted for harbouring *Nelthorp*, but *Hicks*.

Mrs. *Liſle* went on, and ſaid, ſhe never ſo much as wiſhed the Rebels Succeſs: She knew the King was her Sovereign, and ſhe would have ventured her Life to ſerve him: She knew it was his Due, and ſhe owed him all ſhe had in the World; and though ſhe could not fight for him herſelf, her Son did; he was actually in Arms on the King's Side in this Buſineſs; ſhe inſtructed him early in the Principles of Loyalty, and ſent him thither; it was ſhe that bred him up to fight for the King; And, ſhe obſerved, That *Keynſham*, where *Hicks* was ſaid to be in Arms, was not in this County.

The Chief Juſtice anſwered, The Treaſon ſhe committed was in this County; and then proceeded to ſum up the Evidence, and direct the Jury. He ſaid, this was a Caſe of very great Example, and very great Weight; wherein the Intereſt of the Publick, and the Life of a Perſon of Quality and Fortune, was put into their Hands: That they were not to be moved by Compaſſion for the Priſoner, or the Allegations and Proteſtations of her Innocence, on the one Hand, or to be influenced by any Thing that came from the Court or the learned Counſel, on the other; but were to be guided entirely by the Evidence, which he ſhould repeat with all Faithfulneſs and Integrity, as he ſhould anſwer it before the great Judge of Heaven and Earth.

The Chief Juſtice directs the Jury.

The Chief Juſtice proceeded to ſhew the Miſeries that attended the Grand Rebellion; which, he obſerved, would have been all repeated, if the Rebels under *Monmouth* had met with Succeſs: And, having gone through the Evidence, made ſome ſevere Reflections on the Priſoner and her Family. He ſaid, ſhe pretended much to Religion and Loyalty, and declared how much ſhe wept at the Death of

King

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King *Charles* the Martyr, owning the great Obligations ſhe had to the late King, and the preſent; and that ſhe had not had a Being or any Thing to maintain it for twenty Years paſt, but from their Bounty; and yet, no ſooner was one in the Grave, but ſhe forgot all Gratitude, and entertained thoſe that were Rebels againſt his Brother and Succeſſor. He would not ſay what Hand her Husband had in the Death of that bleſſed Martyr; ſhe had enough to anſwer for her own Guilt: And, he confeſſed, it ought not to be in any Ingredient in this Caſe, what ſhe was in former Times: Whether ſhe rejoiced at the Death of King *Charles* I. or not; that ought not to influence them in this Caſe.

But he thought it a great Aggravation of her Fault, that when Colonel *Penruddock* came to ſearch the Houſe, ſhe denied the Traitors: And obſerved that the Father of this very *Penruddock* alſo was a Martyr, and died for his Fidelity to the Crown: And who was his Judge they all knew, *(Liſle the Regicide, the Priſoner's Husband.)* God Almighty was a juſt God; and it might be worth her Conſideration, how God had been pleaſed to make uſe of the Colonel as the Inſtrument in this Buſineſs.

Our Forefathers, (ſays the Chief Juſtice,) have been deluded; but the Deception, I hope is now at an End. Gentlemen, upon your Conſciences be it: The Preſervation of the Government, the Life of the King, the Safety and Honour of our Religion, and the Diſcharge of our Conſciences, as loyal Men, good Chriſtians, and faithful Subjects, are at Stake: Neither Age or Sex are to move you, who have nothing elſe to conſider, but the Evidence of the Fact you are to try: I charge you, therefore, as you will anſwer it at the Bar of the laſt Judgment, to deliver your Judgment according to Conſcience and Truth.

The Jury put ſome Caſes of Law.

The Jury being about to withdraw, one of them deſired his Lordſhip to inform them, Whether, in Point of Law, it was the ſame Thing, and equally Treaſon, to relieve and harbour a Traitor, before he was convicted, as it was to relieve and harbour him after Conviction?

The Chief Juſtice anſwered, It was the ſame Thing: For, if *Hicks* had been wounded in the Rebels Army, and had come to the Priſoner's Houſe, been entertained, and died there of his Wounds, and ſo could never have been convicted, ſhe was nevertheleſs a Traitor.

The Jury having been out a conſiderable Time, returned into Court; and ſaid, they had ſome Doubt upon them, Whether there was ſufficient Proof, that the Priſoner knew *Hicks* had been in the Army? The Chief Juſtice anſwered, they were Judges of the Proof; but he thought there was no Difficulty in it: Did not ſhe, (ſays he,) enquire of *Dunne*, whether *Hicks* had been in the Army? and when he told her, he did not know, ſhe did not ſay, ſhe would refuſe him if he had been there, but ordered him to come by Night? by which it was evident ſhe ſuſpected it; and when he and *Nelthrop* came, diſcourſed with them about the Battel and the Army? He thought this a plain Proof. The Foreman anſwered, They did not remember it was proved ſhe asked any ſuch Queſtions when they were there. 1685. 1 Jac. II.

The Chief Juſtice replied, Sure, you do not remember any Thing that is paſſed. Did not *Dunne* tell you there was ſuch Diſcourſe, and ſhe was by, and *Nelthrop*'s Name was named? But, if there was no ſuch Proof, the Circumſtances, and Management of the Thing, was as full a Proof as could be.

Here Mrs. *Liſle* would have ſpoke; but the Chief Juſtice told her, ſhe muſt not ſpeak now.

Then the Jury laid their Heads together; and, after a quarter of an Hour's Debate among themſelves, they gave a Verdict, that ſhe was GUILTY. *She is convicted.*

The Chief Juſtice commended the Verdict; and ſaid, he thought the Evidence full and plain; and if he had been amongſt them, ſhould have found her guilty, if ſhe had been his own Mother; and on *Friday*, the 28th of *Auguſt*, paſſed Sentence upon her, that ſhe ſhould be burnt as a Traitor that Afternoon: But, upon the Interceſſion of ſome of the Prebendaries of the Church of *Wincheſter*, ſhe was reprieved till *Wedneſday* the ſecond of *September*. *Sentenced to be burnt.*

In the mean Time a Letter was ſent by the Lords *St. John* and *Abergavenny*, to the Earl of *Clarendon*, to deſire him to repreſent to his Majeſty, that the Priſoner had been a Favourer of the Royaliſts in the late Times of Uſurpation: Which Letter the Earl of *Clarendon* read to his Majeſty. A Petition was alſo preferred to the King, that the Execution might be changed from burning to Beheading; and might be reſpited four Days. To which his Majeſty, anſwered, That he would not reprieve her one Day; but for altering the Sentence; he would do it, if there were any Precedents for it. Whereupon ſeveral Precedents were offered of altering the Sentence; as that of the Duke of *Somerſet*, who was condemned to be hanged for Felony in the Reign of *Edw.* VI. and that of the Lord *Audley*, for Felony, 7 *Car.* I. Queen *Catharine Howard*, condemned for Treaſon, in the Reign of *Hen.* VIII. The Counteſs of *Salisbury*, 32 *Hen.* VIII. and *Jane Grey* in the firſt Year of Queen *Mary*. Whereupon the King ſigned a Warrant for Beheading Mrs. *Liſle*; ordering both the Head and Body to be delivered to her Friends, to be interred decently and privately. *Precedents of altering the Sentence.*

This Warrant being delivered to the Sheriff of *Hampſhire*, ſhe was, on *Wedneſday* the ſecond of *September* in the Afternoon, carried to the Place of Execution, being a Scaffold erected in the Market-Place of *Wincheſter*: Where, having delivered a Paper to the Sheriff, and performed her Devotions, ſhe ſubmitted to the Block, and her Head was ſevered from her Body. *She is beheaded.*

Gentlemen, Friends, and *Neighbours.*

Her Paper left with the Sheriff.

" IT may be expected that I ſhould ſay
" ſomething at my Death, my Birth and
" Education being near this Place. My
" Parents inſtructed me in the Fear of God;
" and I now die of the reformed Religion;
" always being inſtructed in that Belief, that
" if Popery ſhould return into this Nation,
" it

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" it would be a great Judgment, I die in Expectation of Pardon of my Sins, and Acceptation with the Father, by the imputed Righteouſneſs of *Jeſus Chriſt*, he being the End of the Law for Righteouſneſs to every one that believeth. I thank God, through *Chriſt Jeſus*, I depart under the Blood of Sprinkling, that ſpeaketh better Things than that of *Abel*; God having made this Chaſtiſement an Ordinance to my Soul. I did as little expect to come to this Place, on this Occaſion, as any Perſon in this Nation; therefore let all learn not to be high-minded, but fear. The Lord is a Sovereign, and will take what Way he ſeeth beſt to glorify himſelf by his poor Creatures; therefore I humbly deſire to ſubmit to his Will, praying of him, that in Patience I may poſſeſs my Soul.

" The Crime was, my entertaining a Nonconformiſt Miniſter, who is ſince ſworn to have been in the Duke of *Monmouth*'s Army. I am told, If I had not denied them, it would not have affected me; I have no Excuſe but Surprize and Fear; which I believe my Jury muſt make uſe of to excuſe their Verdict to the World. I have been told, that the Court ought to be Counſel for the Priſoner: Inſtead of Advice, there was Evidence given from thence; which (though it was but Hearſay,) might poſſibly affect my Jury. My Defence was ſuch as might be expected from a weak Woman; but, ſuch as it was, I never heard it repeated again to the Jury.

" But I forgive all Perſons that have wronged me; and I deſire that God will do ſo likewiſe. I forgive Colonel *Penruddock*, although he told me, he could have taken thoſe Men before they came to my Houſe.

" As to what may be objected, that I gave it under my Hand, that I diſcourſed with *Nelthrop*; that could be no Evidence to the Court or Jury, it being after my Conviction and Sentence.

" I acknowledge his Majeſty's Favour in revoking my Sentence; and I pray God to preſerve him: and that he may long reign in Peace, and the true Religion may flouriſh under him.

" Two Things I have omitted to ſay, which is, That I forgive him who deſired to be taken from the Grand Jury, and put upon the Petty Jury, that he might be the more nearly concerned in my Death; and return humble Thanks to God, and the Reverend Clergy that aſſiſted me in my Impriſonment.

Sept. 1685. ALICIA LISLE.

The Attainder reverſed.

This Attainder of Mrs. *Liſle* was made void by an Act of 1 *W.* & *M.* reciting, that ſhe was indicted of High-Treaſon, for entertaining the ſaid *John Hicks*, though he was not at the Time of her Trial attainted, or convicted of any ſuch Crime; and this by a Verdict injuriouſly extorted and procured by the Menaces and Violences, and other illegal Practices of the Lord *Jeffries*, Baron of *Wem*, then Chief Juſtice, and Chief Commiſſioner of *Oyer* and *Terminer*.

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Remarks.

This Trial ſufficiently manifeſts the little Care Biſhop *Burnet* uſed, to inform himſelf of the Truth of the facts he relates, even in Inſtances where he might have done it with all the Eaſe imaginable. Either he thought it beneath him to ask a Queſtion, and that it might be a Reflection on his Underſtanding, to be thought ignorant of any Occurrence that happened in his Times, as he calls them; or he deſignedly relates the Facts directly contrary to the Truth, for the Sake of his Party; it being not eaſy to conceive why he ſhould miſreport ſome Paſſages, where the Truth would not have been at all diſadvantagious to his Friends, if it had appeared in its proper Colours.

Speaking of this Trial, he ſays, That the Night after *Monmouth*'s Defeat, *Hicks* and *Nelthrop* eſcaped from the Army, and came to Mrs. *Liſle*'s Houſe for Shelter: That *Hicks* told her the Occaſion; whereupon ſhe immediately ordered a Servant to give an Information againſt them to a Juſtice of Peace, and in the mean while to ſuffer them to eſcape; but on a ſudden the Houſe was ſurrounded by a Party, who took both them, and her for harbouring them: That *Jeffries* procured a Promiſe from the King not to pardon her: That there was no Proof ſhe knew the Perſons were Rebels; nor were they in any Proclamation: But *Jeffries* charged the Jury in a violent Manner; and turned them back twice, threatening them with an Attaint: Whereupon at length they brought her in guilty; and ſhe expreſſed great Joy, that ſhe ſuffered for an Act of Charity and Piety.

Now, in the firſt Place, *Hicks* and *Nelthrop* did not come to Mrs. *Liſle*'s Houſe the Night after *Monmouth*'s Defeat; for the Battle of *Sedgmore* was fought on the 6th of *July*, and *Hicks* and *Nelthrop* did not come to her Houſe till the 28th of *July*. Mrs. *Liſle* ſays in her Defence, that ſhe was at *London* at the Time of the Battle, and when the Duke of *Monmouth* was beheaded; and did not come into the Country above a Week before theſe two Gentlemen were taken at her Houſe; which was three Weeks after the Battle of *Sedgmore*: How the Biſhop, therefore, came to ſay they fled to her Houſe the Night after the Battle; or for what Reaſon he forged this Tale, I cannot conceive.

It is equally true, that they were not in any Proclamation; for Mrs. *Liſle* herſelf ſays in the Trial, She knew *Nelthrop* was in a Proclamation.

He ſays alſo, that *Jeffries* gave Evidence himſelf, that they confeſſed they were with *Monmouth*: But I cannot ſee what Occaſion there was for this, when there were three Witneſſes, that ſwore poſitively *Hicks* was in *Monmouth*'s Army; and would have perſuaded them to join the Rebels.

As to Mrs. *Liſle*'s ſending to inform a Juſtice of Peace, that *Hicks* and *Nelthrop* were at her Houſe, as ſoon as they came; it appears, they ſupped and lay all Night in her Houſe; and were not taken till the next Morning: Nor did ſhe ever mention her ſend-

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ing to inform a Juſtice of Peace of there being there, as ſhe certainly would have done, in her Defence at the Trial, if ſhe had ever given any of her Servants ſuch Orders.

He alſo abuſes his Friend, Mrs. *Liſle*, when he ſays, ſhe expreſſed great Satisfaction, that ſhe died for performing an Act of Piety and Charity: For it is evident, ſhe expreſſed herſelf quite otherwiſe; declared her Deteſtation of Treaſon and Rebellion, and prayed for the King with her laſt Breath; which does not agree with that pretended Joy, for having harboured and concealed his Enemies.

Nor is it true, that the Jury were turned back twice, and threatened with an Attaint: They, indeed, deſired to be ſatisfied in two Points. 1. Whether it was Treaſon to receive a Rebel before he was convicted: To which the Court anſwered, It was. 2. They doubted whether *ſhe knew Hicks* was in the Army: To which the Chief Juſtice anſwered, The Priſoner's ordering them to come in the Night, was a ſtrong Preſumption of it; but the talking of the Battle at Supper, left them no Room to doubt of it. Whereupon the Jury, without withdrawing again, gave their Verdict, that ſhe was guilty. And perhaps the only Thing that deſerves Cenſure in this Trial was, the convicting her of High-Treaſon, for harbouring *Hicks* before he was convicted of Treaſon. There is no Doubt to be made that it is High Treaſon, *knowingly* to harbour a Traitor before he is convicted: But the Act for reverſing the Attainder ſeems to intimate, that a Perſon cannot be tried for receiving or harbouring a Traitor till that Traitor is convicted; and in this I am apt to think Mrs *Liſle* had Injuſtice done her. I do not doubt her Guilt; but yet I think ſhe was not legally convicted. As to the other Inducements mentioned in the Act, relating to the Chief Juſtice's Menaces, theſe, poſſibly, were thrown in by Friends. I do not find the Chief Juſtice uſed any Threats, either to the Jury or Witneſſes; unleſs when he examined *Dunne*, who notoriouſly prevaricated, and forſwore himſelf at this Trial, by his own Confeſſion; and from whom the Truth was extorted with the utmoſt Difficulty.

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The Trial of JOHN FERNLEY, Barber-Surgeon, for *High-Treaſon*, at the *Old-Baily, London*, on the 18th of *October*, 1685. 1 *Jac.* II.

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Fernley's *Trial.*

The Indictment.

THE Indictment charges the ſaid *John Fernley* with High-Treaſon; for that, on the 20th of *Auguſt*, in the firſt Year of the King, at the Pariſh of St. *Mary White-Chapel*, in the County of *Middleſex*, knowing one *James Burton*, to be a falſe Traitor and Rebel, he did harbour, conceal, and ſuſtain him, in his Manſion-Houſe, ſituate in the ſaid Pariſh; againſt the Duty of his Allegiance, *&c.*

The King's Counſel firſt produced the Record of *Burton*'s Outlawry: After which *Burton* himſelf was ſworn as a Witneſs againſt the Priſoner.

Burton depoſed, That coming home to his Houſe in *Wapping*, from *Monmouth*'s Army in the *Weſt*, his Wife got him a Lodging at Mr. *Fernley*'s: That he dined with *Fernley* on the *Sunday*, and they diſcourſed of *Monmouth*'s Army being routed; and he believed he told *Fernley* he was there.

Burton's Wife depoſed, That ſhe took the Lodging for her Husband, at *Fernley*'s, becauſe ſhe thought he was not ſafe at Home: That Mrs. *Fernley* was her Acquaintance; and they dined together at *Fernley*'s on *Sunday*.

Mr. *Reynolds* depoſed, That having a Warrant from the Lieutenant of the Tower, in *Auguſt* laſt, he apprehended *Burton* in *Fernley*'s Houſe: That he was got up a Chimney, and fell down with the Soot about his Ears, as they were looking for him.

Then *Burton*'s Pardon was produced, to make him a Legal Witneſs.

Fernley's Defence.

Fernley, in his Defence, ſaid, That *Burton* came to lodge at his Houſe on the *Friday*; but he knew nothing of his being there till the *Sunday* following, when they dined together; and *Burton* told him how he made his Eſcape: That one *Gaunt* came to his Houſe after Dinner, and asked for Mr. *Burton*; and being brought in, *Gaunt* told him, in a little Time he ſhould have a Paſſage for him beyond the Sea: That ſome Gentlemen were gone, and others were about going; particularly Colonel *Danvers* and Major *Wildman:* That he intended, the next Morning, to have acquainted a Magiſtrate with this, and have apprehended them all; for *Gaunt* had promiſed to come again, and he had *Burton* ſecure in his Houſe already, being himſelf a Conſtable: He had no Deſign to conceal *Burton*; eſpecially, as he knew there was an 100*l.* offered in the Proclamation for taking him; and he was a poor Man, and had no Obligation to conceal him, and ruin himſelf and his Family.

The Court told him, if he had had a loyal Heart, he would have ſecured both *Burton* and *Gaunt*, and not have concealed *Burton* ſeven or eight Hours in his Houſe after he knew of his Treaſons.

The Priſoner, anſwered, He propoſed to have ſeized both *Danvers* and *Wildman*, when he had learned of *Gaunt* where they were; for he knew there was a Proclamation out againſt them; and this Deſign would have been defeated, if he had taken up *Gaunt* or *Burton* that Evening: What he had done, was with a Deſign to ſerve the King.

The Court replied, If he had had an honeſt Intention, he would have acquainted ſome Juſtice of Peace with the Matter.

Then the Priſoner called Witneſſes to his Reputation: One of them ſaid, *Fernley* was a Barber, and uſed to ſhave him; and he looked upon him to be a ſober Man: Another teſtified, That he went to Church, behaved himſelf very well, and he never heard him ſpeak againſt the Government. He called

ſome

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The Chief Juſtice directs the Jury.

ſome others; but they did not come into Court.

Then the Lord Chief Juſtice *Jones* directed the Jury, and obſerved, That *Burton*, whom the Priſoner harboured, was not only in *Monmouth*'s Rebellion; but was outlawed for being in the *Rye-Houſe* Conſpiracy; and had been abſent from his own Houſe two Years on that Account: That he confeſſed *Burton*'s being in his Houſe, and his acquainting him that he had been in the Rebellion; and left it to them, whether there was not ſufficient Evidence againſt him.

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The Jury found him GUILTY.

He is convicted.

The Sentence and Remarks will be found at the End of Alderman Corniſh's *Trial, who was tried the ſame Day.*

The Trial of WILLIAM RING, for *High-Treaſon*, at the *Old-Baily*, *London*, on the 19th of *October*, 1685. 1 *Jac.* II.

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Ring's *Trial.*

The Indictment.

THE Indictment charges the ſaid *William Ring* with High-Treaſon; for that on the 20th of *July*, in the firſt Year of the King, in the Pariſh of St. *Clement Danes*, in the County of *Middleſex*, he, well knowing *Joſeph Kelloway* and *Henry Lawrence* to be Traitors and Rebels, did harbour, conceal, and ſuſtain them in the Dwelling-Houſe of him the ſaid *William Ring*, ſituate in the Pariſh and County aforeſaid; againſt the Duty of his Allegiance, *&c.*

The Conviction of Kelloway *and* Lawrence.

The King's Counſel producing the Records of *Kelloway*'s and *Lawrence*'s Convictions, it appeared they had been indicted of High-Treaſon, in levying War againſt the King; and that they confeſſed the Indictment on the Araignment; and the uſual Judgment of High-Treaſon had been pronounced on them.

The Evidence.

Then the Witneſſes were called to prove that *William Ring*, the Priſoner, did receive and harbour them, between the Time the Treaſon was committed, and their Conviction.

Barrington depoſed, He ſaw *Kelloway* and *Lawrence* at *Ring*'s Houſe in *Wyche-Street*, the Day after they came to *London* from the Duke of *Monmouth*'s Army in the *Weſt*.

Barrow depoſed, That he heard *Ring* confeſs before the Lord Mayor, that *Lawrence* and *Kelloway* told him, they had both been in the late *Weſtern* Rebellion in *Monmouth*'s Army; and that he had lodged them two or three Nights afterwards in his own Houſe.

Criſp alſo depoſed, That *Ring* confeſſed he lodged them ſeveral Nights after they told him they fled from *Monmouth*'s Army in the *Weſt*.

Then *Ring*'s Examination was read: Wherein he confeſſed he lodged *Lawrence* and *Kelloway* ſeveral Nights after they had told him they had been in *Monmouth*'s Army, (which was routed); and that they left their Horſes at *Newbury*.

Ring, in his Defence, ſaid, That he acknowledged he lodged them; but he did not know they had been in the Rebellion; and that he was frighted, when he ſet his Hand to the Examination, and did not know what he did.

Ring's *Defence.*

The Jury found *Ring* GUILTY.

See Alderman Corniſh's *Trial, for the Sentence and Remarks.*

The Trial of ELIZABETH GAUNT, Wife of *William Gaunt*, for *High-Treaſon*, at the *Old-Baily*, *London*, on the 19th of *October*, 1685. 1 *Jac.* II.

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Gaunt's *Trial.*

The Indictment.

THE Indictment charges the ſaid *Elizabeth Gaunt* with High-Treaſon; for that, on the 24th Day of *September*, in the 30th Year of the late King *Charles* II. in the Pariſh of St. *Mary White-Chapel*, in the County of *Middleſex*, ſhe, the ſaid *Elizabeth Gaunt*, well-knowing one *James Burton* to be a falſe Traitor and Rebel, in a certain Houſe, to the Jurors unknown, did, knowingly, ſecretly, and traitorouſly ſuſtain and maintain, and Meat, Drink, and five Pounds in Money, for the Maintenance and Suſtinence of the ſaid *James Burton*, to him did maliciouſly and traitorouſly deliver; againſt the Duty of her Allegiance, *&c.*

The Attorney-General, in opening the Evidence, obſerved, That the Priſoner and her Husband were the great Brokers for carrying over Traitors beyond Sea; ſuch as the Lord *Shaftesbury*, and others.

The Evidence.

Burton being ſworn, depoſed, That he was concerned with the two *Rumbolds*, and others, in the *Rye-Houſe* Plot; and that the Conſpirators intended to have killed the late King *Charles* II. That *Keeling* making a Diſcovery, he (the Witneſs) was put into a Proclamation, and thereupon abſconded: That about two Months afterwards, the Priſoner, Mrs. *Gaunt*, came to him, and told him, there were ſome Perſons about to make their Eſcape; and took him along with her to a little Brewhouſe in *Half-Moon-Alley* in *Biſhopſgate-Street*, and carrying him up Stairs into a Room, he found the two *Rumbolds* there: That he lay there all Night, and went with one of the *Rumbolds* next Morning to *Whitechapel*, where they took Horſe, and rode to *Rochford*-Hundred, and waited there two Days, when a Veſſel they were to embark on, came down; but finding it leaky, and ill-mann'd, and the Weather bad, they came back to *London*, where he (this Witneſs) lay a great many Months after: And Mrs. *Gaunt* came to him again, and told him, there were two Perſons going, and he might have a Paſſage: And a Boat being ready at the Water-ſide, carried him to *Graveſend*,

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ſend, from whence he went to *Amſterdam*; and that Mrs. *Gaunt* furniſhed him with about five Pounds in Money.

It being demanded, How Mrs. *Gaunt* came to take ſo much care of him? He ſaid, he ſuppoſed, becauſe ſhe knew her Husband was concerned: That her Husband would have gone with him and Captain *Walcot* to view what Condition the *Tower* was in: And Capt. *Walcot*, when *Gaunt* was with them, ſaid, he had a Deſign to take a Houſe over againſt the *Tower*, and put ſome Men into it, to break into the *Tower*.

Mary Gilbert, *Burton*'s Daughter, depoſed, That Mrs. *Gaunt* came to their Houſe, the Night her Father went away, and carried him to a Houſe without *Biſhopſgate*; where ſhe (the Deponent) ſaw a Man with one Eye, a full-ſet Man, full of Pockholes, *(Rumbold)*: And being asked, Why her Father went away? She ſaid, on account of the Proclamation.

Mrs. *Burton*, the Wife of *Burton*, being ſworn, depoſed, That Mrs. *Gaunt* came to enquire after her Husband, and told her, if he was willing to go away, ſhe would take care: And it being demanded, Why Mrs. *Gaunt* came to ſecure her Husband? ſhe ſaid, It was becauſe he was in the Proclamation; and for Fear her Husband ſhould know any Thing againſt Mrs. *Gaunt*'s Husband.

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Then *Burton*'s Pardon was produced, to ſhew he was a Legal Witneſs.

Mrs. Gaunt's Defence.

The Court demanding of the Priſoner, What ſhe ſaid to this Evidence? ſhe anſwered, She did not contrive to ſend *Burton* away.

Being told, Two Witneſſes had ſworn it, and again demanded, Whether ſhe did or not? ſhe anſwered, She did not come there to tell them what ſhe did: And being asked, If ſhe did not know *Burton* was in the Proclamation about *Rumbold*'s Plot? She anſwered, *It's like I might.*

The Chief Juſtice's Directions to the Jury.

The Chief Juſtice, in his Direction to the Jury, told them, If they thought ſhe did know, or believe, *Burton* to have been guilty of that Treaſon, and that ſhe did help to convey him away, as the Witneſſes had ſworn, by giving him Money, and ſolliciting him ſeveral Times to be gone, they ought to find her guilty.

The Jury brought her in GUILTY.

See the End of the next Trial, for the Sentence, Remarks, &c.

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The Trial of HENRY CORNISH, Eſq; for *High-Treaſon*, at the *Old-Baily*, *London*, on the 19th of *October*, 1685. 1 *Jac.* II.

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Corniſh's *Trial.*

The Indictment.

THE Indictment charges the ſaid *Henry Corniſh* with High-Treaſon, in compaſſing the Death of the late King *Charles* II. And the Overt-Act laid as an Evidence of it, was, That on the 30th of *May*, in the 35th Year of the ſaid King *Charles* II. at the Pariſh of St. *Michael Baſſiſhaw*, *London*; he did malicioufly and traitorouſly (knowing *James* late Duke of *Monmouth*, *William Ruſſel* Eſq; Sir *Thomas Armſtrong* Knight, and divers other Traitors and Rebels, to have conſpired the Death of the ſaid King, then and there promiſe, That he the ſaid *Henry Corniſh* would be aiding and aſſiſting to them in carrying on the ſaid Treaſon; againſt the Duty of his Allegiance, *&c.*

Moves to put off his Trial.

Mr. *Corniſh* being arraigned, moved to put off his Trial: He ſaid, He had no Counſel, no Pen, Ink, or Paper, allowed him: That his Children had petitioned his Majeſty laſt Night, and he referred them to the Judges.

Refuſed.

The Attorney-General anſwered, He had Pen and Ink as ſoon as he petitioned for it; and the King had left him to the Courſe of the Law, that he could not conſent to put off the Trial; nor did he ſee any Reaſon, why Mr. *Corniſh* ſhould be in a better Condition than other Priſoners; he had not deſerved ſo well of the Government.

Mr. *Corniſh* replied, The Lord *Ruſſel* had ſeven or eight Days allowed him.

The Court ſaid, My Lord *Ruſſel*'s Trial was put off but till the Afternoon, and thoſe that were tried there, had generally no Notice at all: However, if one Man had a particular Favour, another could not claim it: That it was almoſt a Week ſince he was apprehended, and he knew what he was charged withall.

Mr. *Corniſh* ſaid, It did not appear by the Warrant, Whether he was committed for Treaſon againſt this King, or the laſt: But not being able to obtain more Time, the Jurors were called; of whom Mr. *Corniſh* having challenged thirty-five, the following Gentlemen were ſworn.

The Jury.

Thomas Rawlinſon,	*William Cloudeſley*,
Thomas Langham,	*Richard Holford*,
Ambroſe Iſtead,	*William Longboat*,
Thomas Pendleton,	*Stephen Coleman*,
John Price,	*Robert Clavel*,
Thomas Oneby,	*William Long.*

Colonel Rumſey's Evidence.

Mr. *Rumſey* being called as a Witneſs for the King, depoſed, That the latter End of *October*, or the Beginning of *November*, 1682, he was ſent by the Lord *Shaftesbury* to the Duke of *Monmouth*, the Lord *Ruſſel*, Lord *Grey*, Sir *Thomas Armſtrong*, and Mr. *Ferguſon*, (who were then met at Mr. *Sheppard*'s Houſe) to know their Reſolution: And that they told him, they were diſappointed by Mr. *Trenchard*: He had not been there a Quarter of an Hour, but Mr. *Sheppard* was called, who went down, and brought up Alderman *Corniſh*: The Alderman coming into the Room, made his Excuſe he did not come ſooner; and ſaid, He could not ſtay with them, becauſe they were to meet that Night about their Charter: Whereupon *Ferguſon* pulled a Paper out of his Boſom; which the Company told him they had read, and deſired the Alderman to read it; but *Ferguſon* read it to him, and being asked, how he liked it, he ſaid, very well: That in this Paper there were two Points, which he remembred very well, one was, *That they would declare for Liberty of Conſcience*; *and the other* was, *That all thoſe that would aſſiſt in the Inſurrection, who had any Church or Crown-Lands, in the late War,*

ſhould

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ſhould have them reſtored: It was a Declaration to be diſperſed on the Riſing.

Mr. Attorney demanding, If there was a riſing intended at that Time? *Rumſey* anſwered, Yes; and they met therefore for that Purpoſe: And Mr. *Trenchard* was the Man to manage the Buſineſs about *Taunton*; and he diſappointed them.

Being asked again, What his Meſſage to them from the Lord *Shaftesbury* was? he anſwered, It was to know what Iſſue they had come to about the Riſing, and to preſs them to it; and repreſent that ſuch a Matter was not to be long kept on Foot; either they ſhould come to a Reſolution to riſe, or let it fall for Good and all: And Mr. *Corniſh* ſaid, *He liked it very well, and that poor Intereſt he had, he would join with it.*

Here Mr. *Corniſh* declared, he never was at any Conſult at Mr. *Sheppard*'s; but he had had great Dealings with him: Mr. *Rumſey* ſaid, Mr. *Corniſh* and he had great Concerns together, while he *(Rumſey)* managed the Cuſtoms at *Briſtol:* Mr. *Corniſh* had returned between three and four thouſand Pounds for him: He was a very honeſt Gentleman, and *Rumſey* appealed to himſelf, If he thought he took any Delight in appearing againſt him?

Corniſh demanded, Why he had not accuſed him all this while? *Rumſey* anſwered, I think I ſuffer for it, and not you: You ſay I accuſe you falſly: Then Mr. *Corniſh* you don't ſtand there, nor I here.

Mr. Attorney demanding, If he never had any Diſcourſe with the Priſoner at other Times? *Rumſey* anſwered, They had been acquainted fourteen Years, but he never heard him ſpeak any Thing of this Nature before.

Goodenough's *Evidence.*

Goodenough, who had been Under-Sheriff to Mr. *Corniſh*, being ſworn a Witneſs for the King, depoſed, That he knew nothing of the Buſineſs of the Lord *Ruſſel*; but that an Inſurrection was intended in *London:* They deſigned to divide the City into twenty Parts; and out of each Part to raiſe 500 Men, to make an Inſurrection: They were to take the *Tower*, and drive the Guards out of Town.

That ſome Time before this, in *Eaſter*-Term, 1682, he happened to be at Mr. *Corniſh*'s Houſe, and ſaying to him, the Law will not defend us now, though never ſo innocent; ſome other Way muſt be thought on; Mr. *Corniſh* anſwered, I wonder the City is ſo unready, and the Country ſo ready: And he (this Witneſs) replied, There was ſomething thought of to be done here; and in the firſt Place the *Tower* ought to be ſeized: Whereupon Mr. *Corniſh*, after a ſhort Pauſe, ſaid, *I will do what I can*, or, *what Good I can:* That afterwards Mr. *Corniſh* meeting him on the *Exchange*, asked how Affairs went, which he underſtood to relate to what they diſcourſed of before; but he never met him afterwards.

Here Mr. *Corniſh* bid *Goodenough* remember all his Tricks; and demanded, If any one was preſent when he had that Diſcourſe with him? *Goodenough* anſwered, No; it was in his little Room in his own Houſe.

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Mr. *Corniſh*'s *Defence.*

Mr. *Corniſh*, in his Defence ſaid, It was ſtrange he ſhould meet *Rumſey* and the reſt of the Conſpirator's at Mr. *Sheppard*'s; and yet, by *Rumſey*'s own Evidence, never ſpeak to him of the Matter afterward; and declared ſolemnly, in the Preſence of God, he knew nothing of it: He objected alſo, that *Rumſey* was not a good Witneſs, becauſe he had not his Pardon: But the Court ruled, he was a good Witneſs, if he could ſhew no Record of his Conviction.

His Witneſſes.

Then the Priſoner called ſeveral Witneſſes, to ſhew he had no Intimacy or Friendſhip with *Goodenough*; and that *Bethel*, the other Sheriff, in a Manner compelled him to ſuffer *Goodenough* to be their Under-Sheriff.

Mr. *Jekyl*, and others, depoſed, That Mr. *Corniſh* declared, *Bethel* would put *Goodenough* upon him for his Under-Sheriff; and he ſaid, he would not have him (as he remembered), becauſe he was obnoxious to the King and Government: And Mr. *Gosfright* depoſed, That Mr. *Corniſh* told *Bethel* he would fine, and not hold the Shrievalty, if *Goodenough* was Under-Sheriff; and he believed Mr. *Corniſh* was never reconciled to him; from whence Mr. *Corniſh* inferred, how unlikely it was, he ſhould truſt him with Secrets of this Nature.

Dr. *Calamy*, the Miniſter of his Pariſh, depoſed, That Mr. *Corniſh* came to Church conſtantly with his Family, received the Sacrament once a Month; and he never heard him ſay a diſreſpectful Word of the Government, during the two Years he was Miniſter there.

Some other Witneſſes gave the Priſoner a good Character, as to his Loyalty and Reputation in the World.

Mr. Sheppard *examined after the Jury were withdrawn.*

Then the Chief Juſtice directed the Jury, and ſeemed to be of Opinion, the Priſoner was guilty. The Jury being withdrawn a conſiderable Time, were returning with their Verdict; when Mr. *Corniſh* deſired Mr. *Sheppard* might be examined, as an Evidence for him: Which Mr. Attorney oppoſed, as very irregular, after the Jury was gone out: However, Mr. *Sheppard* appearing, the Jury came into Court again; and the Priſoner was indulged ſo far, as to have Mr. *Sheppard* examined.

Mr. *Sheppard* depoſed, That at one of the Meetings of the Conſpirators at his Houſe, Mr. *Corniſh* came thither, to ſpeak with the Duke of *Monmouth*, or ſome of the Company; but did not ſtay half a Quarter of an Hour: That he *(Sheppard)* came up, and went out with him; and, that there was not one Word read, or any Paper produced, while he was there: He remembred indeed, there was a Declaration read; *Ferguſon* pulled it out of his Shoe: But he was poſitive there was no Paper read to Mr. *Corniſh*; for he was not looked upon to be of the Company: And Mr. *Corniſh* was at his Houſe but once, when the Duke of *Monmouth* was there.

The Lord Chief Juſtice *Jones* then obſerved, There was a Cabal of Rebels met together, and Mr. *Sheppard* brought up the Priſoner to them without their Leave; which was ſcarce credible, unleſs he knew him to be one of the Company.

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Mr. Attorney alſo obſerved, That *Sheppard* ſwore at a former Trial, he had Orders from the Company not to bring up any Perſon.

Sheppard anſwered, They deſired he would let none of his Servants come up; and that he fetched them Wine, and what they wanted: But he could ſafely ſay, Mr. *Corniſh* knew nothing of their Buſineſs.

Rumſey examined again.

Mr. *Rumſey*, being confronted with Mr. *Sheppard*; again depoſed, That as ſoon as Mr. *Corniſh* had made an Excuſe for not coming ſooner, all the Company gathered about him; and ſomebody ſaid, They would tell him what they had done: They ſaid, the Declaration had been read, which *Ferguſon* had prepared, and that Mr. *Corniſh* ſhould hear it read; and with that Mr. *Sheppard*, though he denied it, did take the Candle and hold it; and while the Company ſtood round the Priſoner, *Ferguſon* pulled the Declaration out of his Pocket, and it was read, and Mr. *Corniſh* approved it; and ſaid, *With that ſmall Intereſt*, or *little Intereſt, he had, he would aſſiſt*; or Words to that Effect.

Then Mr. Solicitor made his Obſervations on the Evidence, and ſaid,

Mr. Solicitor's Obſervations on the Evidence and Defence.

Gentlemen, There hath been a very great Indulgence given to the Priſoner, and it is to ſhew you what Tenderneſs a Court of Juſtice hath, and always will have, of the Lives of the King's Subjects: After a full Evidence, though he had neglected his Defence, yet you were again ſent for into Court, to hear what further Evidence he had to offer to you; I cannot but obſerve, this looks like a ſubtile Contrivance on the Priſoner's Part: You ſee what Endeavours have been made by Mr. Attorney General, to have had *Sheppard* here a Witneſs for the King; you have obſerved he hath told you he had a *Subpœna* for him, but he was abſent; in what Company he was abſent Yeſterday, he hath told you, with Mr. *Corniſh*'s Son: This Morning he was not to be found after he had received this *Subpœna* from Mr. *Corniſh*; he ſtays without, and gives no Notice; but when you are withdrawn, can ſend Intelligence to Mr. *Corniſh*, that he had ſomething to ſay, that he hopes will excuſe him now: What that is, I muſt beg you a little to obſerve. Truly, I am very glad, for the Satisfaction of all Men, that Mr. *Sheppard* hath now been here; and he is ſo far from invalidating any one Part of the Teſtimony, that by all the Circumſtances you can collect from this Evidence that is given, it is a Corroboration of it: Mr. *Corniſh* was accuſed of being preſent at Conſultations that have been held againſt the Life of the King, and for raiſing Rebellion at Mr. *Sheppard*'s Houſe: His excuſing his not coming there, is a ſufficient Argument, to prove he was privy to their Meeting; he hath gone on further, and proved to you the reading the Declaration. Now what ſays *Sheppard* to this Witneſs? Mr. *Corniſh*, by the Way, I muſt obſerve to you, before did deny his being there: He had been ſometimes in Company with *Ferguſon*; but he did not like the Man, he ſays, becauſe of his Morals: Now the Witneſs he hath produced, hath given you this Teſtimony, That Mr. *Corniſh* hath been there in that Company; That he came in ſuch a Manner, that no Man but muſt be ſatisfied he was privy to their Deſigns, and did know of their Meeting; for he came when the Duke of *Monmouth*, and the reſt of the Conſpirators, were there met in private, with a direct Charge to Mr. *Sheppard*, that is the Witneſs, that they ſhould be ſo private, that no one Servant ſhould come up into the Room; yet Mr. *Sheppard* tells you, That when Mr. *Corniſh* came, he carried him up into the Room, without ſo much as acquainting any one of the Company, that Mr. *Corniſh* had a Deſire to come; but brings him up as if he were (and I make no Doubt, but you will imagine he was) one of the Company: When he comes there, he ſays, his Buſineſs is with the Duke of *Monmouth*, the Head of that Conſpiracy: And he himſelf tells you, he never had any Dealings with the Duke of *Monmouth* in his Life; What can a Man imagine of that Man, that had no Dealings with the Duke of *Monmouth*, to find him out in a Place where no Mortal could know, and none was to know; and coming to him at that Time, and at that Place, under thoſe Circumſtances of Concealment; no Man almoſt but, out of his own Mouth, muſt believe that he was privy to that Conſpiracy: Therefore, though this Witneſs doth ſeem to forget ſome Part of the Evidence, the reading the Declaration and holding the Candle, yet theſe are ſuch Circumſtances, that in themſelves do carry a Proof of the Charge, and do confirm all the reſt that the Witneſs hath ſaid; and this muſt be a great Satisfaction to you, that he was there preſent, and privy to that Deſign. And ſo I leave it to your Conſideration.

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He is convicted.

The Jury withdrawing again, returned in a ſhort Time, and brought in Mr. *Corniſh* GUILTY.

Sentence paſſed on Fernley, Ring, Gaunt, *and* Corniſh.

Then all the Priſoners that had been tried that Day, were ſet to the Bar, *viz. John Fernley*, *William Ring*, *Elizabeth Gaunt*, and Mr. *Corniſh*; and Sentence was pronounced on them as Traitors.

The three firſt executed at Tyburn.

Fernley and *Ring* were afterwards executed at *Tyburn*; and Mrs *Gaunt* was burnt in Purſuance of her Sentence.

Mr. Corniſh *executed in* Cheapſide.

Alderman *Corniſh* was drawn from *Newgate* to *Cheapſide*, where a Gallows was erected for his Execution, on the 25th of *October*, 1685; where he began a Speech, to the People, but did not finiſh it. He ſaid,

His Speech.

" I Am come here this Day, condemned to die; but God is my Witneſs, the Crimes laid to my Charge, were falſly and maliciouſly ſworn againſt me by the Witneſſes: For I never was at any Conſult, nor any Meeting, where Matters againſt the Government were diſcourſed of. I never heard or read any Declaration, nor ever acted any Thing wilfully againſt the Government. I confeſs, through the Juſtice of God, my private Sins have brought me to this infamous End: Yea, it were juſt with God, not only to deprive me eternally of his Preſence, but to condemn me to everlaſting Torments; but through *Jeſus Chriſt*, I hope to be eternally bleſſed: Yea,

" as

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" as to the Crimes for which I ſuffer, on the " Words of a dying Man, I am altogether " innocent. I bleſs God I was from my " younger Years brought up, and have for " ſome Years continued, a Proteſtant, in the " Communion of the Church of *England*; " in which Communion I now die. I have " often partaken in the Ordinances, the bleſ- " ſed Effects and Comfort whereof I now feel " in this my Agony. I bleſs God, I was " born under a Government, in the Conſti- " tution of which I did ever acquieſce, and " in which I was once a Member; at which " Time, I did according to the beſt of my " Underſtanding: *(Here, it is ſaid, he was " interrupted by one of the Sheriffs. Then he " went on, and ſaid,)* I bleſs God, I was " born in a Land of Light, where the Goſ- " pel hath been preached in Power and Puri- " ty: He might have brought me forth in a " Land of Darkneſs and Ignorance; but " bleſſed be God, for *Jeſus Chriſt*-----*(The Perſon who publiſhes this Speech ſays, more of it could not be taken, becauſe of the Noiſe of the People, and Interruption of one of the She- riffs; and whether thus far be genuine we have a great deal of Reaſon to queſtion: He adds,)* That the Alderman intreated the Sheriff to intercede with his Majeſty, to be kind to his poor Wife and Children: And the Sheriff promiſing him to wait on his Majeſty the next Day about it, he replied, " Mr. Sheriff, " I thank you; the Lord reward you a thou- " ſand fold: The Lord put it into your Hearts " to be kind to the Widows and Fatherleſs; " it is your Duty. The Lord put it into " the Hearts of all good People to pray for " me."

And having finiſhed his Devotions, the Executioner did his Office.

His Attainder reverſed. The Attainder of Alderman *Corniſh* was reverſed by Act of Parliament, in the firſt Year of King *William* and Queen *Mary*.

Remarks on the four laſt Trials. Biſhop *Burnet*, mentioning theſe Trials, in his Poſthumous Hiſtory, Vol. I. ſays, That Mrs. *Gaunt* was a mighty pious charitable Woman; and that there was no other Witneſs againſt her, but the Perſon ſhe harboured, beſides her Maid, which he thinks was not legal Evidence; and reflects on the Court, for directing the Jury to convict her; eſpecially there being no Proof, that ſhe knew the Perſon ſhe harboured was a Rebel. He adds, That Woman died with great Conſtancy, *and rejoyced ſhe was made the firſt Martyr for Religion.*

This is another notorious Inſtance of this Right Reverend Prelate's being given to Leaſing-making, as his Countrymen call it: For, in the firſt Place, Mrs. *Gaunt* was not ſo much as charged with *harbouring Burton*, but with maintaining him and giving him Money; which Facts were proved upon her by *Burton*, his Wife, and Daughter; nor was there any Maid of Mrs. *Gaunt*'s called as an Evidence againſt her. It was alſo proved, that ſhe aſſiſted *Burton* to make his Eſcape; and that the Priſoner and her Husband made it their Buſineſs to conceal and convey Rebels and Traitors beyond Sea, and actually conveyed over the Lord *Shaftesbury*, and ſeveral more of the Biſhop's Friends; for which Reaſon, I preſume, he gives her thoſe Epithets, of Pious and Charitable. It is plain alſo, from the Trial, that ſhe knew *Burton* was in the Proclamation: She did not deny it, when the Court demanded, if ſhe did not know that *Burton*'s Name was in the Proclamation about *Rumbold*'s, or the *Rye-houſe* Plot; but anſwered, *It's like I might:* Which ſurely, the Biſhop could never look upon as a Proof of her being unacquainted with it. But there was further Evidence, that ſhe knew of the Proclamation, and the Priſoner's Guilt: It appears in the Trial, that the Reaſon ſhe maintained *Burton*, and took ſuch Care to ſend him away, was for Fear he ſhould become an Evidence againſt her own Husband, and not out of Friendſhip to *Burton*; much leſs did ſhe do it as an Act of Piety and Charity, unleſs ſhe looked upon the concealing and conveying away Traitors and Rebels, to be Acts of Piety and Charity.

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But, whatever were the Motives ſhe went upon, it muſt be acknowledged to be a very baſe Action in *Burton*, to come in as a Witneſs againſt a Perſon, who had maintained him in his Diſtreſs, and ſaved him from the Gallows: A Man of any Spirit or Generoſity, would have choſen Death rather than Life, upon ſuch Terms. And ſuch Inſtances as this, and that other of *Fernley*, who harboured the very ſame treacherous *Burton*, would make Men very cautious how they harboured their beſt Friends on ſuch Occaſions as theſe. *William Ring*, who harboured *Lawrence* and *Kelloway*, alſo is another unhappy Inſtance of the Ingratitude and Baſeneſs of ſome Men, who can ſacrifice their beſt Friends and Benefactors, to ſave their own Lives.

As to Mr. *Corniſh*, it was certainly his own Witneſs, Mr. *Sheppard*, that hanged him. There was but one Witneſs againſt him, namely, Colonel *Rumſey*, till *Sheppard* appeared; for as to *Goodenough*, his Teſtimony was trifling; and no Jury would ever have found a Man guilty of High-Treaſon upon it. But when Colonel *Rumſey* had ſworn, that Alderman *Corniſh* was at that treaſonable Conſultation at Mr. *Sheppard*'s with the Duke of *Monmouth*, the Lord *Ruſſel*, *Armſtrong*, and *Ferguſon*; and that he heard the Declaration read, which they deſigned to publiſh on the intended Inſurrection, and approved of it: And Mr. *Sheppard* depoſed alſo poſitively, that the Alderman was at his Houſe; and, that he carried him into that very Company, without asking any Queſtions, as *Rumſey* had depoſed: Here were two poſitive Witneſſes of his being at that treaſonable Conſult: And his Friend *Sheppard*'s diſagreeing with *Rumſey*, as to that Circumſtance of his hearing the Declaration read, could not avail him: There was ſo ſtrong a Preſumption that *Corniſh* was an Accomplice, that the Jury could ſcarce doubt of it, after both Witneſſes had ſworn poſitively he was there, and introduced without any Queſtions asked, when the Company, met upon ſuch a Deſign, deſired they might be private; and that even *Sheppard*'s own Servants might not come up: Is it to be ſuppoſed, after this, that Mr. *Sheppard* would have carried

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ried up a Gentleman, without their Leave, who was not a Confederate with them? However, if it was not ſuch Teſtimony as ought to have prevailed on the Jury to convict him, it was certainly legal Evidence at leaſt. We have ſeen Men convicted upon Evidence in other Reigns, that has neither been ſo ſtrong, or ſo legal as this.

The Alderman's Friends were apprehenſive *Sheppard*'s Evidence would do him more hurt than Good, and had kept him out of the way till the Jury were juſt returning: And, as one obſerves, there was a kind of Fatality in his appearing then; for, if he had not, his Friend probably had been acquitted. 1685. 1 Jac. I.

1685. 1 Jac. II.

The Trial of CHARLES BATEMAN, Surgeon, for *High-Treaſon*, at the *Old-Baily*, *London*, on the 9th of *December*, 1685. 1 *Jac.* II.

1685. 1 Jac. I.

Bateman's *Trial.*

The Indictment.

THE Indictment charges the ſaid *Charles Bateman* with High-Treaſon, in conſpiring the Death of the late King *Charles* II. for that he, the ſaid *Charles Bateman*, on the 30th Day of *May*, in the 35th Year of the ſaid late King, at the Pariſh of St. *Dunſtan's in the Weſt*, in the Ward of *Farringdon-without*, being aſſembled with divers other Rebels and Traitors, did promiſe and undertake to be aiding and aſſiſting in ſeizing the Perſon of the ſaid King, taking the *Tower* of *London*, ſurpriſing the City, the *Savoy*, and the Royal Palace of *Whitehall*, againſt the Duty of his Allegiance, *&c.*

Keeling's Evidence.

The King's Witneſſes being called, *Joſiah Keeling* was ſworn, who gave a General Account of the Plot, and depoſed, That the Conſpirators having divided the City into twenty Parts, Mr. *Bateman* was pitched upon as a fit Perſon to manage one of theſe Diviſions, in order to an Inſurrection, the ſeizing of the City, *&c.*

The Priſoner obſerving, that this Evidence did not affect him; the Court declared the Jury were to take no further notice of it, than as a General Proof of the Plot.

Lee's Evidence.

Thomas Lee being ſworn, depoſed, That he was ſent by Sheriff *Goodenough* to the Priſoner, to diſcourſe with him concerning the intended Diviſion of the City into twenty Parts; and he obſerved the Priſoner was no Stranger to the Deſign: That he conſented to it, and deſired to talk with Mr. *Goodenough* about it: That he went with the Priſoner, at another Time, to the late Duke of *Monmouth*'s, and having diſcourſed with ſome of his Grace's Family, he told this Witneſs, that the Duke was willing to engage in the Buſineſs; and had ſeveral Horſes kept in the Country, to be in a Readineſs when Things ſhould come to Extremity: That he went with the Priſoner alſo to a Tavern, where was propoſed, the ſeizing the King, the *Tower*, *Whitehall*, &c. and the Priſoner ſaid, he would not be wanting therein: And that they had other Diſcourſe tending to an Inſurrection; and particularly the Priſoner ſaid, he intended to take a Houſe near the *Tower*, and place Men in it, in order to ſurprize it; and that he had had ſeveral Conferences with Sea-Captains about that Affair.

Goodenough's Evidence.

Goodenough depoſed, That being at the Tavern with *Wade*, the Priſoner, and other Conſpirators, the Priſoner did not only approve of their Deſign, but promiſed to uſe his Intereſt in raiſing Men; and ſaid, he would not only aſſiſt in the Diviſion allotted him, but in ſurpriſing the *Savoy*, and driving the Guards out of Town.

Bateman's Defence.

Mr. *Bateman* urged in his Defence, the Improbability of his being engaged in ſo deſperate a Deſign; and demanded the Reaſon he was not proſecuted ſooner, the Witneſſes having ſworn they were ſpoken ſo long ſince.

The King's Counſel replied, That *Goodenough* was not to be had, till after the Rebellion in the *Weſt*; and *Keeling*'s ſingle Teſtimony was not ſufficient to convict him.

Then the Priſoner called one *Baker*, a broken Shoe-maker, to invalidate *Lee*'s Teſtimony, who ſaid, that *Lee* deſired him to inſinuate himſelf into the Priſoner's Company and talk with him of State Affairs, in order to entrap him; but no great weight was laid upon this Evidence, it being ſuppoſed the Witneſs was hired to blaſt *Lee*'s Credit.

He is convicted.

The Priſoner was found GUILTY: And being called to hear Judgment on *Friday* the 11th of *December*, he objected, That *Goodenough* was not fully pardoned: But the Court informed him, that, as to the Outlawry, he was pardoned, and the Pardon allowed in the Court of *King's-Bench*; and for any thing elſe he was not proſecuted. Then Sentence was paſſed on the Priſoner as a Traitor; and he was executed at *Tyburn* on the 18th of *December*.

condemned, and executed.

Remarks on Bateman's Trial.

The Enemies of the Government reported, that Mr. *Bateman* was a Madman; and charged it on the Miniſtry, as a great Piece of Barbarity, to try and execute a Man that was diſtracted: But it is evident *Bateman* was not mad, when he was committed to *Newgate*, by the Confeſſion of his Friends; nor at the Time of his Execution: For they tell us, he made a very Pious and Chriſtian *Exit:* And ſhould the Court neglect to try a Man that pretends to be mad, when he is brought before them, every Criminal would make the ſame Pretence. No doubt the Court were ſatisfied Mr. *Bateman* counterfeited; and it is a ſtrong Preſumption he did, ſince it appears he was not mad before or after: The Court were ſo indulgent, indeed, to allow his Son to write for him and aſſiſt him in his Defence, when he affirmed he was not well, which ſome make an Argument of the Priſoner's Madneſs: Particularly thoſe worthy Hiſtorians, the Authors of *Rapin*, who turn every Favour their Friends receive, into a Hardſhip; and clamour againſt their Governors, for what they ought to return them Thanks.

Biſhop

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Biſhop *Burnet* ſays, The ſending Mr. *Bateman* to that diſmal Priſon of *Newgate* made him mad: I preſume he means, he was ſeized with Horror at the Thoughts of his approaching Trial; for a Friend of his, that has given us the following Character of the Man, only ſays, *He grew melancholy; and appeared little leſs than diſtracted, when he came upon his Trial.*

Mr. Bateman's *Character, by a Friend,*

" Mr. *Bateman* was a Man of good Senſe, " good Courage, and good Company; of a " very large and generous Temper, and of " conſiderable Repute and Practice in his " Calling; a great Lover and Vindicator of " the Liberties of the Kingdom; and of " more Intereſt than moſt of his Station. " Being kept cloſe Priſoner in *Newgate*, the " Windows and Rooms all dark, and little " or no Company, having been a free, jolly " Man, and uſed to Converſation and Di- " verſion, he ſoon grew deeply melancholy, " that when he came on his Trial, he ap- " peared little leſs than diſtracted. However, " he was found guilty; and juſt before his " Execution, very much recovered himſelf, " dying as much like a Chriſtian, and with " a Preſence of Mind inferior to few that " have ſuffered."

1685. 1 Jac. II.

The Trial of JOHN HAMPDEN, Eſq; for *High-Treaſon*, on the 30th of *December*, 1685. 1 *Jac.* II.

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Hampden's *Trial.*

The Indictment.

THE Indictment charges the Priſoner with High-Treaſon, in conſpiring the Death of the late King *Charles* II. and the Subverſion of the Government; for that the ſaid *John Hampden*, on the 20th of *July*, in the 35th Year of the ſaid late King, at the Pariſh of St. *Giles's in the Fields*, in the County of *Middleſex*, did traitorouſly meet, and conſult with *James* Duke of *Monmouth*, and divers other Traitors, how to procure great Sums of Money, and levy Forces to raiſe a Rebellion within this Kingdom, againſt the Duty of his Allegiance, *&c.*

Objects, he had been fined already for this Offence.

Mr. *Hampden* objected, That he ought not to be queſtioned for this Fact again, becauſe he had been tried and convicted of the ſame two Years ſince; and was now a Priſoner in Execution for his Fine: But he ſhould wave all Manner of Pleas, and throw himſelf upon the King's Mercy.

The Chief Juſtice anſwered, He had never yet been tried for Treaſon; *(but for a Miſdemeanor;)* and he muſt either plead Guilty or Not guilty: Whereupon he pleaded GUILTY, acknowledged, he had highly offended his Majeſty, and begged the Chief Juſtice would intercede for him. Whereupon his Plea was recorded; and Mr. Recorder pronounced the uſual Sentence in Caſes of High-Treaſon.

He confeſſes the Charge. Is condemned.

Remarks.

Is it poſſible, after the Convictions and Confeſſions of ſo many principal Conſpirators, to doubt of the Plot that was carried on by the Duke of *Monmouth*, the Lord *Shaftesbury*, &c. againſt King *Charles* II?

Mr. *Hampden* was afterwards pardoned by King *James*, and yet appeared one of his greateſt Enemies at the Revolution.

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The Trial of HENRY Lord DELAMERE, for *High-Treaſon*, before the Lord Chancellor *Jeffries*, Lord High Steward, *pro hac vice*, and thirty Peers, his Tryers, on the 14th of *January*, 1685-6. 1 *Jac.* II.

1685. 1 Jac. II.

Lord Delamere's *Trial.*

The Indictment.

THE Indictment was found by the Grand Jury of the County Palatine of *Cheſter*, and charged the Priſoner with High-Treaſon, in compaſſing the Death of the King; for that, on the 14th Day of *April*, in the firſt Year of his Majeſty's Reign, at *Mere*, in the ſaid County of *Cheſter*, he the ſaid *Henry* Lord *Delamere*, did traitorouſly aſſemble, conſult, and agree, with *Charles Gerrard* Eſq; and others falſe Traitors, to raiſe Money and Forces to make a Rebellion, and to ſeize the City of *Cheſter*, with the Magazines there; and that afterwards on the 27th of *May*, in the Year aboveſaid, he took a Journey from *London* to *Mere* aforeſaid, to accompliſh his ſaid traitorous Intentions; and that, on the 4th of *June*, in the ſaid Year, at *Mere* aforeſaid, in further Proſecution of his ſaid traitorous Purpoſes, he did invite divers of his Majeſty's Subjects to join with him and the ſaid other Traitors; againſt the Duty of his Allegiance, *&c.*

His Lordſhip being arraigned, and required to hold up his hand, inſiſted, that by his Privilege of Peerage, he need not hold up his Hand; and the Lord High Steward was of Opinion, it was not material, whether he did or not, if they were ſatisfied he was the ſame Perſon that was indicted.

The Lord *Delamere* deſiring to be informed, Whether he was to addreſs himſelf to his Grace, or to the Lords Triers, was anſwered He muſt direct what he had to ſay, to the Lord High Steward, who was Judge of the Court, but not one of the Triers.

A Plea to the Juriſdiction of the Court.

Then his Lordſhip preſented a Plea in Paper, ſigned with his own Hand, to the Juriſdiction of the Court; inſiſting, 1. That he ought to be tried by the whole Body of the Peers in Parliament; becauſe the Parliament was ſtill in being, under a Prorogation, and not diſſolved. 2. Becauſe the Houſe of Lords was already poſſeſſed of the Cauſe, it having been agitated there the laſt Seſſion.

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To which it was anſwered, That, if the King pleaſed to try a Peer in Parliament, the Record was brought into the Houſe, and they proceeded there as in other Caſes; all the Peers being Judges. Thus it was in a time of Seſſion of Parliament; but when the Parliament was prorogued, then the Proceedings were before the Lord High Steward: Nor was the Houſe of Lords poſſeſſed of the Cauſe: There was nothing depending there, that could ouſt this Court of its Juriſdiction: Nothing but a Petition, and the King's Anſwer that he intended a ſpeedy Proſecution of this Lord: There was not ſo much as an Indictment returned thither, or found during that Seſſion. And Inſtances were given of the Lord *Cornwallis*, and the Lord *Morley* being tried by Commiſſion during a Prorogation of Parliament.

The Lord *Delamere* obſerved, That in theſe Trials the Queſtion never came under Debate: To which the Lord High Steward anſwered, That it would have been Error in the whole Proceedings, if the Court had not Juriſdiction; and the Judges would not have let things paſs in that Manner, if they had been erroneous: Beſides, there were a great many other Inſtances to be given; he had only mentioned theſe as late Precedents within Memory.

Then the Priſoner deſired, he might have Counſel to argue theſe Points; but was anſwered, the Objections were trifling: However, if he had Counſel ready, they would hear them; for a Priſoner muſt always be ready to anſwer a Plea to the Juriſdiction of the Court; and his Lordſhip having no Counſel ready, his Plea was over-ruled: And his Lordſhip pleaded *Not guilty*.

The Plea over-ruled.

Then the Lord High Steward made the following Speech upon the Occaſion.

Lord High Steward.

My Lords.

Lord High Steward's Speech.

" I KNOW you cannot but well remember, what unjuſt and inſolent Attempts were made, upon the rightful " and unalterable Succeſſion to the Imperial " Crown of theſe Realms, under the Pretence of that which has been ſo often " found to be the Occaſion of Rebellion, I " mean the ſpecious Pretence of Religion, by " the fierce, froward, and fanatical Zeal of " ſome Members of the Houſe of Commons, " in the laſt Parliaments, under the late " King *Charles* II. of ever bleſſed Memory.

" Which, by the wonderful Providence of " Almighty God, not prevailing, the chief " Contrivers of that horrid Villany conſulted " together, how to gain that Advantage upon the Monarchy by open Force, which " they could not obtain by a pretended Courſe " of Law.

" And, in order thereto, it is too well " known they had ſeveral treaſonable Meetings, made bold and riotous Progreſſes into ſeveral Parts of the King's Dominions; " thereby endeavouring to debauch the minds " of the well-meaning, though unwary and " ignorant, Part of the King's Subjects.

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" But theſe their evil Purpoſes, it pleaſed " God alſo to fruſtrate, by bringing to light " that curſed Conſpiracy againſt the Life of " his Sacred Majeſty, King *Charles* II. as " alſo againſt that of our dread Sovereign, that " now is, whom God long preſerve.

" Theſe helliſh and damnable Plots, one " would have thought, could not have ſurvived the juſt Condemnation and Execution " of ſome of the chief Contrivers of them; " eſpecially conſidering, that, after it had " pleaſed almighty God to take to himſelf " our late merciful and dread Sovereign, no " ſooner was his Sacred Majeſty, that now " is ſeated in the Royal Throne of his Anceſtors, but he made it his utmoſt Endeavours, " not only to convince the World, that he " had quite forgot thoſe impudent and abominable Indignities that had been put upon " him, only for being the beſt of Subjects, " and the beſt of Brothers; but did alſo give " forth the moſt benign Aſſurances imagi- " nable to all his loving People, that he " would approve himſelf to be the beſt of " Kings.

" And farther to evince the Reality of " theſe his gracious and heroick Reſolutions, " he immediately called a Parliament; and " therein repeated and ſolemnly confirmed " his former Royal Declarations, of having " a particular care of maintaining our eſtabliſhed Laws and Religion: With which " that wiſe, great, and loyal Aſſembly were " ſo fully and perfectly ſatisfied, that they " thought they could not make ſufficient Returns of Gratitude for ſuch gracious and " Princely Condeſcenſions.

" And yet, my Lords, while the King and " the Parliament were thus, as I may ſay, " endeavouring to out-do each other in Expreſſions of Kindneſs, that wicked and unnatural Rebellion broke out; and thereupon, the Arch-Traitor, *Monmouth*, was " by a Bill, brought into the Lower Houſe, " and paſſed by the general Conſent of both " Houſes, (and I could wiſh, my Lords, for " the Sake of that Noble Lord at the Bar, " that I could ſay it had paſſed by Conſent " of every particular Member of each Houſe,) " juſtly attainted of High Treaſon.

" My Lords, What Share my Lord at the " Bar had in thoſe other Matters, I muſt acquaint you, is not within the Compaſs of " this Indictment, for which you are to try " him as his Peers; for that is for a Treaſon " alledged to have been committed by him in " his Majeſty's Reign that now is.

" Give me Leave, my Lords, to detain " you with a Word or two more upon this " Occaſion; and that is, To let you know, " That as my Lord at the Bar may with " great Safety and Security to himſelf, rely " on your Lordſhip's Candour and Integrity, " that you will be tenderly careful, and ready " to acquit him of the Teaſon whereof he is " accuſed, if upon the Evidence that ſhall be " given you, you ſhall find him innocent: " So I muſt tell you, the King has an entire " Confidence in your Reſolution, Fidelity, " and good Affections to him, that you will " not, by Reaſon of the Priſoner's Quality,

" and

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" and Nearneſs to you, as being a Peer of " this Realm, acquit him if he ſhall appear " to be guilty.

" My Lords, I have one Thing further to " mind your Lordſhips of; That, according " to the uſual Forms of Proceedings in theſe " Caſes, if your Lordſhips have any Que- " ſtions to propound, wherein you would be " ſatisfied, as to any Matter either of Fact " or Law, your Lordſhips will be pleaſed to " put thoſe Queſtions to me; and I ſhall " take Care to give your Lordſhips the beſt " Satisfaction I can."

The Lord *Delamere* deſiring he might have one to write for him, it was granted.

Lord Howard's *Evidence.*

Then the King's Witneſſes were called; and firſt the Lord *Howard* of *Eſcrick* was ſworn, who gave a General Account of the Lord *Shaftesbury*'s Conſpiracy, as at the Trials of the Lord *Ruſſel* and Colonel *Sidney*, which Plot was previous to this for which the Priſoner was indicted; but it was ſuggeſted by the King's Counſel, that the Conſpirators were, many of them, the ſame in both Conſpiracies.

Lord Grey's *Evidence.*

The Lord *Grey* being ſworn next, depoſed as follows. About the Time when the Election of Sheriffs was ſo much conteſted in the City of *London*, the Duke of *Monmouth* and my Lord *Shaftesbury* began to diſcourſe about making uſe of that, as an Opportunity to accompliſh their Deſign; for they thought the Ferment ſo high, that Men would eaſily be diſpoſed to an Inſurrection: And they propoſed to procure a Riſing in three Parts of the Kingdom at once: One in *Cheſhire*, where the Duke of *Monmouth* was to be; and there he was to be adviſed by my Lord *Macclesfield*, my Lord *Brandon*, my Lord *Delamere* that then was, and the Priſoner at the Bar, what Gentlemen were proper to apply to for joyning in the Deſign: The ſecond was in *London*, which was the Province aſſigned my Lord *Shaftesbury:* And the third in the *Weſt*, which was committed to the Care of my Lord *Ruſſel.* The Duke of *Monmouth* did accordingly go his Progreſs into *Cheſhire*; and on his Return, was taken into Cuſtody of the Serjeant at Arms. Upon which Sir *Thomas Armſtrong* was ſent Poſt to Town to get an *Habeas Corpus*, and to deliver a Meſſage to me, to be communicated to my Lord *Ruſſel* and my Lord *Shaftesbury*, which was to this Effect: That he had been kindly received by the Gentlemen of the County, and had diſcourſed the Matter with them; and found them all inclined very much to his Satisfaction: That upon his being arreſted, he had been adviſed to make his Eſcape into *Cheſhire* and riſe immediately; but that he would not do a Matter of that great Importance without the Approbation of his Friends.

Soon after the late King's Death, the Duke of *Monmouth* was at *Amſterdam* with my Lord *Argyle*; and underſtanding an Inſurrection was deſigned in *Scotland*, he ſent Captain *Matthews* into *England*, with a Meſſage to Major *Wildman*, deſiring him to procure a Meeting with my Lord *Macclesfield*, my Lord *Brandon*, my Lord *Delamere* and Mr. *Charlton*, and acquaint them, that he had received a full Account of my Lord *Argyle*'s Affairs, and the Preparations that had been made for it; and accordingly he had ordered his own Affairs to join with him. He likewiſe ſent *Craig* with a Meſſage to the ſame Purpoſe, to other Friends in *London*; and he diſpatched one *Batteſcomb* into the *Weſt*, to prepare Things there. When *Craig* returned back again to the Duke, he gave him an Account, that Major *Wildman* had procured a Meeting with thoſe Lords and Gentlemen that I mentioned before, who were all of Opinion that the Duke ſhould go for *Scotland:* There was likewiſe a particular Meſſage from Major *Wildman* to the Duke of *Monmouth*, that he deſired he would bring over with him a Broad Seal, to ſeal Commiſſions with, and to take upon him the Title of King. The other particular Branches of the Meſſage I do not ſo well remember; but only this, He was particularly asked, If the Priſoner at the Bar was there? And he ſaid, He was.

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Jones came ſome Time after *Craig*, and gave an Account of other Things conformable to what *Craig* had ſaid; and was ſent back again to *England* by the Duke of *Monmouth*. to give an Account of his being ready to ſail. By all Diſcourſes with the Duke, he depended very much upon *Cheſhire*; and was reſolved to have landed and begun there; but he conſidered the Perſons to be applied to there, were Men of great Quality and Intereſt in their Country, and able to manage Things without his Aſſiſtance. But in the *Weſt*, the Friends he relied on, were not of that conſiderable Quality, and therefore he choſe to land there.

Wade's *Evidence.*

Mr. *Wade* being ſworn, depoſed, That he was with the Duke of *Monmouth* and the Earl of *Argyle* in *Holland*, when they were concerting Meaſures for the Invaſion of *Great Britain*; and that, after a Conference on this Subject, the Duke of *Monmouth* ſent over Captain *Matthews* to his Friends in *Cheſhire*, and amongſt the reſt to the Lord *Delamere* by Name, deſiring them to be in Readineſs to aſſiſt him when he ſhould land: That when the Duke landed at *Lyme*, he ordered his March ſo that he might meet with his *Cheſhire* Friends, namely, towards *Glouceſter*, to gain the Poſſeſſion of *Glouceſter*-Bridge; which giving him the Command of the River *Severn*, the *Cheſhire*-Men, if they had roſe, as was expected, might have eaſily aſſembled, and joined him: That *Jones* coming over to *Holland*, to know the Reaſon the Duke ſtaid ſo long, his Friends in *England* expecting him long before; he was diſpatched to *England* again, to aſſure Major *Wildman*, the Lord *Macclesfield*, the Lord *Delamere*, and Lord *Brandon*, that he was coming, and deſired their Forces might be ready to aſſiſt him.

Goodenough's *Evidence.*

Richard Goodenough alſo depoſed, That *Jones* was ſent by the Duke of *Monmouth* from *Holland*, to give the Lord *Delamere* Notice to be ready againſt the Time he landed; and to deſire he would take Care of himſelf, that he was not ſecured by the Government at *London:* Adding, That he heard the Duke of *Monmouth* ſay, He hoped my Lord *Delamere* would not break his Promiſe with him.

Jones,

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Jones, being ſworn, depoſed, That being ſent over to from *Holland* by the Duke of *Monmouth*, he ordered him, as ſoon as he came to *London*, to ſee for Captain *Matthews*, Sir *Thomas Armſtrong*'s Son-in-Law, and deſire him to acquaint the Lord *Macclesfield*, the Lords *Brandon*, and *Delamere*, that he was reſolved to ſet out for *England*, the Day after this Witneſs came away: That the Duke alſo gave him a Paper of Inſtructions ſealed up, which he was not to open, till he came to Sea; and told him Captain *Matthews* was to ſend one Poſt to the Place named in his Inſtructions, to receive Intelligence of his Landing, that the Lords above-mentioned might have Notice of it before the Court, and repair to their reſpective Stations: And the Duke directed, that if *Matthews* was out of the Way, he ſhould apply himſelf to *Wildman*; but that he ſhould not, by any Means, deliver the Meſſage to thoſe Lords himſelf.

That the Deponent coming from *Holland*, the 22d of *May*, broke open his Inſtructions, when he was at Sea; wherein was written to this Effect: Taunton *in* Somerſetſhire *is the Place to which all are to reſort: The Perſons to be acquainted with the Time of landing, are, the Lords* Macclesfield, Brandon, *and* Delamere: *The Coach to be ſent to Mr.* Savage's, *the* Red-Lyon *in* Taunton: *The Expreſs was appointed to return to Captain* Matthews's *Lodgings, at Mr.* Blake's *and if he did not receive the Meſſage, he was to appoint one to receive it.*

That this Witneſs arrived at *London*, the 27th of *May*, and ſent for Mr. *Diſney*; who told him, *Matthews* and *Wildman* were both out of Town: Whereupon he delivered his Meſſage to *Diſney*; who ſaid, He would do what he could to convey the Meſſage to them: And the Witneſs then went out of Town, and met the Duke of *Monmouth* at *Lyme*, where he landed; and acquainting the Duke with what he had done, he ſeemed troubled, that *Matthews* was out of Town.

Story's *Evidence.*

Story, being ſworn, depoſed, That on the 28th of *May* laſt, one *Brand* told him, That *Jones* was returned from *Holland*, with a Meſſage from the Duke of *Monmouth*; and that the Duke had reſolved to march to *Taunton:* That this Meſſage was delivered to *Diſney*, in the Abſence of Captain *Matthews*; and, that *Diſney*, after he received the Meſſage from *Jones*, had ſome Diſcourſe with the Lord *Delamere:* That the ſame Night the Lord *Delamere* went out of Town with two Friends, a By-way through *Enfield-Chace* to *Hatfield*. And this Witneſs heard the Duke of *Monmouth* ſay, at *Shipton-Mallet*, That his great Dependance was upon the Lord *Delamere*, and his Friends in *Cheſhire*; but he was afraid they had failed him, or betrayed him, or ſome ſuch Words; adding, That he could have been ſupplied elſewhere, if he had not depended on them.

The Evidence of Vaux.

Vaux depoſed, That he went out of Town with Lord *Delamere*, on the 27th of *May*, about nine or ten o' Clock at Night: That his Lordſhip went by the Name of *Brown:* They came to *Hoddeſdon* the ſame Night about twelve, and from thence went to *Hitchin*, and the next Day this Witneſs returned to *London*; and his Lordſhip continued his Journey into *Cheſhire* to ſee his Son: That two Gentlemen went out of Town with him, one of their Names *Edlin*.

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Edlin depoſed, That he went with his Lordſhip and *Vaux* to *Hitchin*, on the 27th of *May*, as *Vaux* had teſtified.

Other Witneſſes depoſed, That his Lordſhip went by the Name of *Brown*; and that the Duke of *Monmouth*'s Declarations were directed to him by that Name.

Hope's *Evidence.*

Hope, the Landlord of the *Three-Tuns* in *Coventry*, depoſed, That his Lordſhip went to and from *London* five Times, between the Coronation and the firſt of *June:* And, that he was at his Houſe the 21ſt of *June*, and talked with this Witneſs, concerning an Encounter between the King's Troops, and thoſe of the Duke of *Monmouth*; particularly he ſaid, If the Duke of *Albemarle* was killed, as was reported, he was killed by his own Men; and that the Duke had ſeveral Field Pieces and Arms for 30,000 Men; ſhewed him the Towns the Duke marched through in a Map; and ſaid, He was afraid there would be a great many bloody Noſes, before the Buſineſs was ended.

Saxon *the principal Witneſs.*

Then *Saxon*, the principal Witneſs, was ſworn, and depoſed, That about the third or fourth of *June* laſt, he was ſent for to *Mere*, the Lord *Delamere*'s Houſe; and when he came there, he was carried into a lower Room; where he ſaw my Lord *Delamere*, Sir *Robert Cotten*, and Mr. *Crew Offley:* They told this Witneſs, he had been recommended to them by the Lord *Brandon*, as an honeſt uſeful Man, and they hoped he would prove ſo.

That they had ſent to the Duke of *Monmouth* in *Holland*, and received an Anſwer by *Jones*; and, on the Receipt of that Anſwer, the Lord *Delamere* came Poſt from *London*, under a borrowed Name: That they deſigned to have raiſed 10,000 Men for the Duke, by the firſt of *June*; but found they ſhould not be able to raiſe them till *Midſummer*; becauſe they muſt get 40,000 *l.* firſt for their Subſiſtence: And asked the Witneſs, if he would undertake to carry a Meſſage to the Duke of *Monmouth?* And when he told them he would, the Lord *Delamere* gave him eleven Guineas, and five Pounds in Silver, for his Journey: And he did hire a Horſe, and delivered his Meſſage to the Duke of *Monmouth*.

The Lord High Steward demanding, How the Lord *Brandon* came to recommend him to theſe Gentlemen? he anſwered, That being in private with the Lord *Brandon*, he complained of the Unfairneſs of an Election, that had been carried againſt him at *Lancaſter*; and ſaid, The Country were reſolved to make it a Pretence for an Inſurrection: They had an Intention to ſend for the Duke of *Monmouth* and make him King; and they muſt make uſe of ſuch Men as him, (the Witneſs) that had an Intereſt in the Country, to ſtir up the People to Arms; and that the Lord *Gerrard* ſhewed him a Letter he had written to the Duke of *Monmouth*, which he ſaw afterwards at *Bridgwater*.

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The Lord *Delamere* demanding of *Saxon*, If he ever employed him before, that he ſhould truſt him with ſuch Secrets? And what was the Buſineſs he was to do?

Saxon anſwered, He never was employed by his Lordſhip before, nor in his Company: But his Buſineſs now was, to inform the Country of the Time of the Riſing: He was a publick Tradeſman at *Middlewich*, and much acquainted with the ordinary Sort of People.

Lord Delamere *deſires Time to make his Defence.*

The Lord *Delamere* being ordered to enter upon his Defence, deſired he might have Time till the next Morning, to review his Notes.

To which the Lord High Steward anſwered, He doubted, whether that could be done by Law: For he took this Court to be of the ſame Nature as the ordinary Courts of Judicature; and in thoſe Courts, after Evidence given, the Jury could not be adjourned; but muſt proceed in their Enquiry, till they were agreed on their Verdict: And the Matter being propoſed to the Judges, they withdrew into the Exchequer-Chamber to conſider of it: The Lords Triers alſo withdrew, leaving the Lord Ligh Steward upon the Bench.

The Judges being returned, declared, That this was a Matter wholly new to them: They did not remember, whether it had ever been done; or that it had been queſtioned, whether it might be done? That where the Trial was by a Jury in an Inferior Court, the Law was clear, the Jury, once charged, can never be diſcharged, till they have given their Verdict: And the Reaſon was, for Fear of Corruption, and tampering with the Jury: But that was no Reaſon in this Caſe; becauſe the Lords Triers were Perſons of that Integrity and Honour, that it was not to be preſumed, they could be prevailed on by ſuch Means.

That in the Trials of Peers in Parliament, the Matter had been adjourned from Day to Day, and the Evidence given by Parcels; and there the Danger of tampering was equal: But whether the Lords, being Judges in that Caſe, and in this, only in the Nature of a Jury; whether that made any Difference, they ſubmitted to his Grace; who being of Opinion,

No Time being allowed him,

that they ought not to adjourn, the Lord *Delamere* proceeded in his Defence, and obſerved,

he enters upon his Defence.

That there had been a great many Witneſſes produced; but little legal Evidence that affected him: That *Saxon* was the only Man that ſaid any Thing poſitively againſt him: The reſt was but Hear-ſay, or ſuch remote Circumſtances as might be talked to any Evidence againſt another Perſon; were only urged, for want of greater Matters to charge him with.

Witneſſes produced to diſcredit Saxon.

Then he called ſeveral Witneſſes to diſcredit *Saxon*. One depoſed, He pretended to have Orders to receive Money, and had no ſuch Orders: Another, That *Saxon* owed him ſeven Pounds, and gave him Bond but for ſix: To which *Saxon* replied, There was but ſix due: A third ſaid, That an Old Woman told him, *Saxon* received five and twenty Shillings for her, of one *Hildage*, and never paid it her: And a fourth, That *Saxon* ſent him a Letter for Money he owed him, and ſet a Bailiff's Name to it: And another, That *Saxon* owed ſeveral People Money; and did not pay them, as he had promiſed.

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Whereupon the Lord High Steward ſaid, They muſt not think to take off the Credibility of a Witneſs by an Old Woman's Tale; and, it was a hard Caſe, if any one owed Money, and could not pay it, his Teſtimony was not to be credited for that Reaſon.

Then the Lord *Delamere* called Witneſſes, to prove that neither Sir *Robert Cotton*, or Mr. *Offley*, were at his Houſe, at the Time that *Saxon* had ſworn he ſaw them with him at *Mere*.

Billing, a Servant of Sir *Robert Cotton*'s, depoſed, That he came to his Houſe at *Weſtminſter*, the 10th of *April*, and remained there till the latter End of *July*.

Margaret Davis depoſed, That Sir *Robert* came to Town the 10th of *April*, and did not go out of Town till *Auguſt*.

Mrs. *Sidney Lane* depoſed, That Sir *Robert Cotton* came to Town in *April*, and remained there till the latter End of *June*.

Several other Witneſſes confirmed the Teſtimony of theſe. Sir *Willoughby Aſton* depoſed, That Mr. *Offley* was at his Houſe, from the twenty-fourth of *May*, to the fourth of *June*, and then returned to his own Houſe at *Crew-Hall*; which was confirmed by Mr. *Offley*'s Servant.

Two of the Lord *Delamere*'s Brothers, and other Witneſſes, depoſed, That his Lordſhip was in *London*, the third, fourth, and fifth of *June*.

Then the Lord High Steward acquainted the Lord *Delamere*, That he would do well to give an Account where he was, from the twenty-eighth of *May*, to the third of *June*.

Lord Delamere *proceeds in his Defence.*

Lord *Delamere*. If your Grace pleaſe, I hope I ſhall give you full Satisfaction in that, by and by: But I hope now I have ſatisfied your Grace, and the reſt of my Lords, that none of us three, whom this Fellow has mentioned, were at *Mere*, when he ſays we were.

My Lord, I cannot help it, if People will tell falſe Stories of me; but I hope your Lordſhips will conſider the Credibility of it. Is it to be imagined, I would take a Man I knew nothing of, upon another Man's Word, into ſo great a Confidence, as to employ him about a Buſineſs of this Nature? I beſeech your Lordſhips to look upon him; Does he look as if he were fit to be employed for the raiſing 10,000 Men? Does he ſeem to be a Man of ſuch conſiderable Intereſt in his Country? A Fellow, that I have ſhewn to be of no Reputation in his Country; nay, of a very ill one. And could we have none to employ, in a Matter of this Moment, but ſuch a Fellow, as his Neighbours would not take his Word for any Thing? Beſides, he is ſtill a Priſoner; and your Lordſhips will not forget, he ſwears to ſave himſelf, having been a Rebel by his own Confeſſion; and has not, as I am informed, his Pardon yet, which renders his Teſtimony ſuſpected.

As to my going down on the 27th of *May*, and my frequent riding Poſt to and fro, I ſhall now ſatisfy your Lordſhips of the Reaſon of my Journies. The firſt Time I went down,

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which was between the Coronation and the Meeting of the Parliament, was to take Poſſeſſion of a Leaſe, of a conſiderable Value, which was renewed to me by the Biſhop: I made ſome Haſte, becauſe of an Intimation that the Biſhop lay very ill; and this I ſhall prove.

Other Witneſſes of the Priſoner's.

Mr. *John Edmonds* was called.

He depoſed, That upon the fifth of *May*, my Lord *Delamere* deſired him to be Witneſs to his taking Poſſeſſion of an Eſtate, upon a Leaſe of my Lord Biſhop of *Cheſter*'s; and that my Lord went into a Houſe, next to the Deponent's (at *Boden* in *Cheſhire*), and there did take Poſſeſſion: That it was a Leaſe for Lives; and the Biſhop was ſo ill at that Time, that he ſpoke to no body.

Mr. *Henry* was called.

He depoſed, That he was appointed Attorney, and delivered the Poſſeſſion to my Lord *Delamere*, the fifth of *May*.

Lord *Delamere*. The next Time I have to ſpeak to, is the 27th of *May*, when I went down to ſee a ſick Child; but had not gone ſo ſuddenly, if I had not had Notice there was a Warrant out againſt me. And when I was at my Houſe in *Cheſhire*, my Wife ſent me Word my eldeſt Son was ſo ill, that I muſt make Haſte up, if I would ſee him alive; and that as to the Warrant, it was a Miſtake.

Mrs. *Kelſey* was called.

She depoſed, That ſhe was at my Lord's Houſe in the Country, when he came down; and he ſaid, the Reaſon of his coming was, becauſe he heard there was a Warrant for taking him up: And beſides, his little Son was ill.

My Lord *Delamere* deſired his Mother might be a Witneſs.

She depoſed, That ſhe ſent him Word his little Son was ill; and that thereupon my Lord came down; and that, while he was in the Country, my Lady, her Daughter, ſent for her Son up Poſt, becauſe his eldeſt Son was dangerouſly ill in Town.

Mrs. *Kelſey* depoſed further, That my Lord came down on *Sunday* Night, and ſtaid till *Tueſday* Morning.

L. H. S. Tueſday the ſecond, you came away, ſhe ſays; and upon *Wedneſday*, the third of *June*, your Brother ſays you were in Town.

Lord *Delamere*. It was ſo, my Lord: I came Poſt through *Coventry*; and that was the Time *Hope* ſpeaks of, that I told him I had come another Way into *Cheſhire*. I came back the common Way, my Wife having ſent me Word, the Buſineſs of the Warrant was a Miſtake.

Mr. *Kelſey* was called.

He depoſed, That my Lord came down to his Houſe, at Eleven on *Sunday* Night, and took Horſe for *London* at three on *Tueſday* Morning; and that the Deponent had Letters by him, which gave an Account my Lord was in Town on the *Wedneſday*.

Sir *Thomas Millington*, the Phyſician, was called.

He depoſed, That my Lord's Son was ſo very ill at that Time, that he acquainted my Lady, he thought he would not recover.

Then my Lord *Delamere* proceeded in his Defence, and ſaid:

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Lord Delamere's Obſervations on the Evidence.

My Lords, I acknowledge, I did go at that Time privately, a By-Road, and by the Name of *Brown*: But as for *Jones*, who, it is ſaid, came from *Holland* that Day, I appeal to himſelf, and I call God to Witneſs, I never ſaw the Man before now; never in my Life: Nay, till after I was made a Priſoner upon this Account, I never ſo much as heard of his Name: And your Lordſhips ſee by the Proofs, that all that has been ſaid againſt me, except what this Fellow *Saxon* has teſtified, is but Hear-ſay, nay indeed, but Hear-ſay upon Hear-ſay, at the third and fourth Hand.

My Lords, if People will make uſe of my Name, and ſay this, and that, and the other, and among themſelves talk of Meſſages ſent to me; can I, or any Man in the World help it? At this Rate, who can be innocent? If a Man muſt be guilty, becauſe others intend to draw him into Treaſon: For there is no more in the utmoſt, that this Proof can amount to. It is at the Pleaſure of any two Men in the World, to take away the Lives, Honours, and Eſtates, of any of your Lordſhips, if it be a Proof ſufficient, to make you guilty of Treaſon, for them to ſwear you were intended to be drawn into Treaſon.

And my Lords, as to the Truth of the Thing itſelf, that there was any Meſſage or Correſpondence between the late Duke of *Monmouth* and me, I call God to Witneſs, I have neither wrote nor ſent Letter or Meſſage to him, or received Letter or Meſſage from him theſe three Years. I cannot tell what Expectation he might have concerning me, or any body elſe: It is very probable he might have Expectation of Aſſiſtance from ſome body; and that, without ſuch Expectations, he would not have made the Attempt he did: But, my Lords, all that is nothing to me; I had no Correſpondence, either by Letters, or Meſſages, with him: So that all that has been ſaid upon that Point of his Expectations, and what he declared, I muſt give the ſame Anſwer to, that I gave to the Evidence about *Jones*'s Meſſage; That admitting it to be true, he did declare ſo, yet, no Proof being made of an actual Correſpondence, it is no more but an Intention in him to draw Men into Commiſſion of Treaſon; and, if that be allowed for Proof of Guilt, I muſt repeat it again, There's no Man can be innocent.

Upon the whole Matter, my Lords, I muſt leave my Caſe to the Conſideration of your Lordſhips: I am not Maſter of ſo much Law or Rhetorick as the King's Counſel, to plead in my own Cauſe: And I have had but little Time to recollect, and apply my Defence to my Accuſation: But I hope, what Evidence I have offered, has given your Lordſhips full Satisfaction, that I am not guilty of what I ſtand charged with.

And, after all that has been ſaid, my Lords, I would beg your Lordſhips to conſider this, That, in caſe I were guilty of theſe Things, and were conſcious to myſelf of having been engaged in an Affair of this Nature; can any Man imagine, I could have been ſo hardy, as

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to have ſurrendered my ſelf upon the King's Proclamation: Nay, if I, with thoſe two other Gentlemen, that he has named, had had any Tranſactions of this Kind, with ſuch a Fellow as he has been made appear to be by his Neighbours, that muſt needs be thought a Man of no Faith, becauſe of no Reputation; though he gives himſelf a great Character, as a Man of great Intereſt, of wonderful Diſpatch and Dexterity, in the Management of ſuch Matters; ſo as at the firſt Sight to put this large Confidence in him; Can it be imagined, I ſo little regarded my own Life, and all that is dear to me, as to have ſurrendred myſelf, were it not that I was certain of my own Innocence and Integrity? Life itſelf, my Lords, is to be preferred above all Things, but Honour and Innocence: And *Job* ſaith, Skin for Skin, and all that a Man hath, will he give for his Life; and why ſhould I be preſumed to have ſo little a Value for it, as voluntarily to deliver up myſelf to Deſtruction, had I been conſcious that there was any one, who could really teſtify any Thing that could hurt me.

Beſides, my Lords, this very Fellow *Saxon* is but one Evidence; and how far you will believe him, I muſt ſubmit it to you; but ſurely one Witneſs will never be ſufficient to convict a Man of Treaſon, though Thouſands of Hear-ſays, and ſuch trivial Circumſtances, be tacked to it; eſpecially when they are tacked to an Evidence, which, I dare ſay, your Lordſhips are far from thinking deſerves any Credit. My Lords, I deſire your Leave to ask this one Queſtion; Would not any of your Lordſhips think himſelf in a bad Condition, as to his Fortune, if he could produce no better Evidence to prove his Title to his Eſtate, than what has been produced againſt me this Day, to take away my Life? And if ſuch Evidence as this would not be ſufficient to ſupport a Title to an Eſtate, certainly it never can be thought ſufficient to deprive a Man of Life, Honour, Eſtate, and all.

My Lords, I am not the only Man that has been, or may be, falſly accuſed: God knows how ſoon the Misfortune of a falſe Accuſation may fall to the Lot of any of your Lordſhips; I pray God it never may: But ſince that may happen, I queſtion not, but your Lordſhips will be very cautious, how, by an eaſy Credulity, you give Encouragement to ſuch a Wickedneſs: For Knights of the Poſt will not end in my Trial, if they proſper in their Villainy; and perhaps it may come home to ſome of your Lordſhips, if ſuch Practices be encouraged, as I cannot but firmly believe they will not.

My Lords, the Eyes of all the Nation are upon your Proceedings this Day; nay, I may ſay, your Lordſhips are now judging the Cauſe of every Man in *England*, that ſhall happen to come under like Circumſtances with my ſelf, at any Time hereafter: For accordingly as you judge of me now, juſt ſo will inferior Courts be directed to give their Judgments, in like Caſes, in Time to come.

Your Lordſhips very well know, Blood once ſpilt can never be gathered up again; and therefore, unleſs the Caſe be very clear againſt me, you, I am ſure, will not hazard the ſhedding of my Blood upon a doubtful Evidence. God Almighty is a God of Mercy and Equity: Our Law, the Law of *England*, is a Law of Equity and Mercy; and both God and the Law require from your Lordſhips, Tenderneſs in all Caſes of Life and Death; and, if it ſhould be indifferent, or but doubtful to your Lordſhips (which, upon the Proofs that I have made, I cannot believe it can be) Whether I am innocent or guilty, both God and the Law require you to acquit me.

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My Lords, I leave my ſelf, my Cauſe, and all the Conſequences of it, with your Lordſhips, and I pray the All-wiſe, the Almighty God, direct you in your Determination.

Mr. Solicitor ſums up the Evidence, and applies it.

Then Mr. Solicitor ſummed up the Evidence for the King, and ſaid:

May it pleaſe your Grace, and you, my Noble Lords, the Peers of my Lord *Delamere*, the Priſoner at the Bar;

The Evidence that hath been given againſt this Noble Lord, is of two Natures. Part of it is poſitive Proof, and Part is Circumſtantial: And, though it be allowed, there muſt be two Witneſſes in Caſes of Treaſon; and that Circumſtances, though never ſo ſtrong and ſufficient to fortify one poſitive Proof, do not, nor can make a ſecond poſitive Witneſs; yet, I crave leave to ſay, that there may be Circumſtances ſo ſtrong and cogent, ſo violent and neceſſary, to fortify a poſitive Teſtimony, that will in Law amount to make a ſecond Witneſs, ſuch as the Law requires.

My Lords, I do not ſay every Circumſtance will do it; but ſuch as is neceſſarily and violently tending to the ſame Thing that was poſitively proved. As for Example:

If a Man comes and ſwears againſt another, that he ſaid he would go immediately and kill the King; and another Man, that did not hear thoſe Words, comes and teſtifies his lying in Wait, which was an Action indifferent in itſelf, yet, when applied to the poſitive Proof, he will be a ſecond Witneſs to ſatisfy the Law, which requires two Witneſſes in Treaſon.

I muſt confeſs, my Lords, when we would make Circumſtances to be a ſecond Evidence, they muſt be ſuch as are neceſſarily tending to fortify the poſitive Evidence, that was given by the ſingle Witneſs. Now, whether that be ſo in this Caſe, I muſt, as becomes me, leave to your Lordſhips Conſideration: It is not my Buſineſs to carry the Evidence farther than it will go; and, I am ſure, it is not my Duty to let it loſe any of its due Weight; and if it have not that Force it ought to have, I ſhould be to blame, as not having done what belongs to me to do: I will therefore ſtate the Fact to your Lordſhips plainly, as it ſtands upon the Proof, and ſubmit the whole to your Lordſhip's Determination.

My Lords, our poſitive Proof, with which I crave Leave to begin, is but one ſingle Witneſs; and that is *Saxon*; and his Evidence is this: That being in *Cheſhire*, where he lives, he was ſent for, about the 3d or 4th of *June* laſt, to my Lord *Delamere*'s Houſe at *Mere*, and there he was brought into a lower Room, where he ſaw my Lord *Delamere*, Sir *Robert Cotton*,

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Cotton, and Mr. *Crew Offley:* That my Lord *Delamere* told him he had received a Meſſage lately by one *Jones*, that was ſent from the Duke of *Monmouth*, whereby he underſtood that the Duke would ſpeedily be in *England*; and that they muſt provide Men and Arms to aſſiſt him when he came: That he was a Man recommended to them by my Lord *Brandon*; and that, upon his Recommendation, they had thought fit to intruſt him in the Matter; and withal told him, they were to raiſe 40,000 *l.* and 10,000 Men in that County. He tells you likewiſe, theſe Gentlemen gave him eleven Guineas, and five Pounds in Silver, to go of an Errand for them to the Duke of *Monmouth*; which he undertook to do, and hired a Horſe to that Purpoſe.

This, my Lords, is the poſitive Proof; and this, I muſt acknowledge, ſtanding ſingle, and by itſelf, will make but one Witneſs; but, whether the Circumſtances that have been offered to your Lordſhips by the other Witneſſes, be ſuch violent Circumſtances as neceſſarily tend to fortify and ſupport that poſitive Evidence, and ſo will ſupply the Defect of a ſecond Witneſs, is the next Queſtion that I am to conſider; and I ſhall take them into Conſideration in the ſame Order that the Evidence was delivered.

The firſt Step, my Lords, that was made, as to any Evidence that toucheth this Noble Lord at the Bar, was what was teſtified by my Lord *Grey*; for as to the other Part of the Evidence, that related to the Conſpiracy in general, I need not trouble your Lordſhips with a Repetition of it. That there was ſuch an one is notoriouſly known; but, I ſay, that Part of the Evidence in his Hiſtory of the Conſpiracy, which my Lord *Grey* brought home to my Lord *Delamere*, was this:

That upon the firſt Meetings and Conſultations, it was reſolved upon, That the Duke of *Monmouth* ſhould go into *Cheſhire*, to make an Intereſt there; and among the Perſons that he was directed to go to, and to apply to for Advice there, as Perſons fit to be truſted, this Noble Lord was one.

That upon the Duke of *Monmouth*'s Return out of *Cheſhire*, he did give his Confederates here in Town an Account how well he had been received; and that he liked all Things very well there. This, my Lords, is the firſt Circumſtance that has been offered to you, to ſhew that he had a Confidence in my Lord *Delamere*, as a principal Support of his Deſigns at that very Time.

The next that we offer is, this Meſſage of *Jones*; and for that our Evidence has fully and plainly made it out to your Lordſhips, that *Jones* did go over into *Holland*; and his Buſineſs there was an Errand from *Diſney* and Major *Wildman*, and the Confederates here. The Effect of his Meſſage was, That it was their Opinion, That the Duke of *Monmouth* ſhould go for *Scotland* and join with my Lord *Argyle:* But upon the Receipt of the Meſſage, he being angry, ſaid, it was too late for ſuch a Meſſage now, and he would come into *England*, for he was ready to ſail; and thereupon he did ſend this ſame *Jones* back again into *England*,

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upon a Meſſage, to inform the Lords, and others of his Party, among whom my Lord *Delamere* was one, that he would have them betake themſelves into their ſeveral Countries, and not ſtay to be taken or clapped up here; for that he did underſtand was the Deſign: And this Meſſage was delivered in Writing: How that the Duke of *Monmouth* did write a Note, and give it to *Jones*, is verified by my Lord *Grey*'s Teſtimony too; and this ſealed up; and he was not to open it till he came to Sea; and when he did open it, he found it containing a Signification of the Place where he was to land, and where he was to rendezvous, which was *Taunton*, and who were the Perſons that were to have Notice of it; among whoſe Names we find my Lord *Delamere*'s to be one: But he likewiſe tells you, he was not the Man that was to carry the Meſſage to theſe Perſons, but he was to deliver it to *Matthews* or *Wildman*; and they were to tranſmit it to the other Perſons.

He tells you, likewiſe, That when he came to Town, which was the 27th of *May*, he met neither with *Matthews* nor Major *Wildman:* Whereupon being at a Loſs what he ſhould do with his Meſſage, for want of thoſe other Perſons, he acquainted *Diſney*, that was executed, with his Errand, who promiſed to take Care that it ſhould be delivered.

This, my Lords, is all *Jones*'s Evidence: For *Jones* does not ſay, that he himſelf acquainted, or that *Diſney* did acquaint my Lord *Delamere* with the Meſſage.

But here, my Lords, is the main Circumſtance that renders the Matter ſuſpicious: That very Night *Jones* came to Town, and *Diſney* being acquainted with the Meſſage, had undertaken to get it delivered, does my Lord *Delamere*, at ten of the Clock at Night, go out of Town, in Company with two Friends, under the Diſguiſe of the Name of *Brown*, and by a Bye-Road, and ſo goes down to his own Houſe in *Cheſhire:* This, I ſay, is the Circumſtance that renders the Thing ſuſpicious.

Now, my Lords, if we do prove, by ſuch ſufficient Evidence as may make the Matter manifeſt to you, that my Lord *Delamere* had Notice of *Jones*'s Meſſage; (for, upon that Point, the Caſe will turn, whether he had Notice, ſuch a Meſſage was brought, that ſuch Things were in Agitation, ſuch Preparations made, and that they were all to go into the Country), then, I ſay, his going down is a violent Preſumption he had an Intent to comply with the Meſſage, and join in the Deſign.

But now, my Lords, comes the Queſtion, the main Queſtion, How it is made out that he had Notice, *Jones* brought ſuch a Meſſage?

Jones, indeed, my Lords, does not ſay, that he himſelf imparted it to him, or that *Diſney* told him he had communicated it; but I think there is another Witneſs, and that is *Story*, who ſaith, That *Brand*, one that knew of the Meſſage, did acquaint him, that my Lord had received it at the Coffee-Houſe, and that Night went out of Town.

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It is true, my Lords, that is but a Hearſay; but that which followed being Matter of Fact, my Lord's going out of Town that Night, ſo late, in the Night, and in ſuch an unſual ſuſpicious Manner, gives more Credit to the Relation, than a bare Hearſay could have of itſelf.

For, unleſs there be ſome good Account given of my Lord's thus going out of Town, it is a kind of neceſſary Preſumption that he was accquainted with the Meſſage, part of which was, that he ſhould go out of Town; and if ſo, it can have no other Conſtruction, with Submiſſion, than to be in purſuance of, and complying with, the Directions of that Meſſage brought him from the Duke of *Monmouth*.

My Lords, to carry this a little farther: There were two Witneſſes produced, that went out of Town with him: They ſeem, indeed, unwillingly to give their Evidence; but I ſhall faithfully repeat what Teſtimony they gave: Their Names were *Vaux* and *Edlin*.

Vaux ſaith, He met my Lord *Delamere* at the *Rumer*-Tavern in *Queen-Street* the 26th Day of *May*, which was the Day before *Jones* came to Town; and that then he appointed to go out of Town the next Day, which was the 27th, and accordingly he did go.

Edlin ſaith, He met *Vaux* at the *Cuſtom-Houſe* upon the 27th of *May* in the Morning; and being deſired by him to go with him out of Town, he did ſo, and there was with him a Gentleman whoſe Name was *Brown*, and who now appears to be my Lord *Delamere*; they went in Company with him as far as *Hitchin*, where they left him upon *Thurſday* the 28th at Noon.

This Evidence is produced to ſhew, that my Lord did go out of Town at that Time, and in that Manner, as has been alledged; and that theſe Perſons went with him, to conduct him a private Way, that he ſhould not go the common Road. Your Lordſhips will conſider what anſwer hath been given to this, and what Account my Lord *Delamere* has given of himſelf.

Another thing, my Lords, that renders this Matter ſuſpicious, is the Name which my Lord was pleaſed to aſſume to diſguiſe himſelf by; it being a Name by which the Party uſe to call my Lord in their Diſcourſes of him; and to prove that, we have likewiſe produced two Witneſſes, *Babington* and *Paunceford*.

Babington ſays, That in their Conſultation there were Diſcourſes of my Lord *Delamere*, under the Name of *Brown*; and once at a Tavern, when my Lord *Delamere* was named by one of the Company, he was preſently catched up for it, and replied to, You mean Mr. *Brown*; and, it ſeems that was the Canting Name under which they diſcourſed of my Lord *Delamere*.

The other Witneſs, *Paunceford*, tells you, That being at *Diſney*'s Houſe, and concerned with him in Printing the late Duke of *Monmouth*'s Declarations, (for the Printing of which *Diſney* was executed) one *Lock* came for ſome of thoſe Declarations for Mr. *Brown*; and they were to be ſent into *Cheſhire*. So that, though your Lordſhips obſerve the Witneſs ſaith ſome body elſe was called by the Name of *Brown*, yet you have had no Account given you, that there was another *Brown* in *Cheſhire*.

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It is true, indeed, my Lords, that theſe are only Things that *Diſney* ſaid, and *Lock* ſaid: But I muſt take leave to ſay, it is very ſuſpicious, that If my Lord went out of Town into *Cheſhire*, under the Name of *Brown*, and ſome Perſons did, on the Behalf of *Brown*, come for Declarations to be ſent into *Cheſhire*, and my Lord commonly, in that Part, went by the Name of *Brown*, that thoſe Declarations were for my Lord; and that will be a great Evidence of his Correſpondence with *Monmouth*.

But, I confeſs, my Lords, all this while our Proof is Circumſtantial, and, indeed, there is no poſitive Proof but that of *Saxon*; and in him our Proof muſt center; for without him, I muſt acknowledge, nothing that has been offered will be Proof againſt my Lord upon this Indictment: For bare Circumſtances, and bare Suſpicions, will be no Proof againſt any Man, but ſuch as are violent and neceſſary; and thoſe joined to a poſitive Proof, ſuch as the Law requires.

Now then, my Lords, I come to the Conſideration of what Weight and Streſs is to be laid upon this poſitive Evidence of *Saxon*: And here, I muſt confeſs, there are Objections made to this Teſtimony, to which I cannot readily give an Anſwer; for *Saxon* has ſworn that he was there at ſuch a Time; and that he was ſent for and entertained, as a Perſon recommended by my Lord *Brandon*, as fit to be entruſted with the Secret, and capable of being employed to ſtir up the Country, in order to the Proſecution of a Deſign they had on Foot to raiſe a Rebellion; and he does charge Sir *Robert Cotton* and Mr. *Crew Offley* to have been there at the ſame time.

The Evidence, my Lord, that has been produced to falſify this poſitive Witneſs, in the Point of Sir *Robert Cotton*'s being there, has been five or ſix Witneſſes, who teſtify Sir *Robert Cotton*'s being in Town, and not elſewhere, from the 10th of *April* to the latter End of *July*: And I do not ſee what we have to ſay in anſwer to their Teſtimony. I muſt agree the Proof to be full in that Point; and if the Evidence they give be true, I cannot ſay that *Saxon*'s Evidence can be true in that Point.

Likewiſe as to Mr. *Offley*, Sir *Willoughby Aſton* and others have teſtified, that he was not at my Lord *Delamere*'s at the Time *Saxon* ſpeaks of; for he gives you an Account where he was every Day, from the 26th of *May* to the 4th of *June*; and his own Servants bring him to his Houſe upon the 4th of *June* in the Evening, which is quite another Way than from Sir *Willoughby Aſton*'s to my Lord *Delamere*'s; If this likewiſe be true, what *Saxon* ſays cannot be true; I muſt agree to it.

There is another Thing that is offered on my Lord *Delamere*'s Part That he was himſelf in Town at that Time that *Saxon* ſays he

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was at *Mere*. But here, indeed, the Matter ſeems to be a little more ſtrange and dubious, that my Lord ſhould make ſo much Haſte down, as to go out late at Night, and ſo cautiouſly as to go by a Wrong Name; and yet to ride to Town again the Poſt-way, to be here juſt the 3d of *June*, when *Saxon* ſwears he was in *Cheſhire*.

I muſt confeſs there is the Proof of his two Brothers, that ſay, they ſaw him in Town the 3d and 4th of *June*. There is, likewiſe, ſome Account given of his going out of Town; that it was upon a Meſſage received from his Mother, that his Child in the Country was ſick; and indeed he did go a By-way, and change his Name for fear of a Warrant, in a Meſſenger's Hand, that was out againſt him to apprehend him.

Now, my Lords, I do not hear any Thing that has been offered, that there was any ſuch Warrant, or any Diſcourſe to ground that Apprehenſion upon: My Lord had the firſt and only Apprehenſion of a Warrant; but upon what Reaſons, he himſelf beſt knows, this Apprehenſion made him go out of Town ſo privately: He ſays, becauſe he would not be prevented of ſeeing his ſick Child.

But how comes it to paſs, that my Lord makes ſuch a ſpeedy Return? By the Proofs it appears, he did not get there till *Sunday* Night, and upon the *Tueſday* Morning comes Poſt for *London*.

The Account he gives of that, is this, his Haſte was to ſee another Child that was here ſick in Town. For he had received an Expreſs from his Wife on the *Monday*, to acquaint him that the Coaſt was clear, and there was no Warrant out againſt him; but, if he intended to ſee his Child alive, he muſt make haſte up to Town; and, accordingly, upon the *Tueſday* Morning early he ſets out, and upon the *Wedneſday* in the Evening is here in Town again.

But with Submiſſion, my Lords, there is no good Account given by this Noble Lord, what Reaſon there was for ſo many Poſt-Journeys backward and forward, as had been teſtified to have been made within a very little Compaſs of Time: For, beſides this of his Return Poſt upon the 2d of *June*, there is only an Anſwer given to one of the reſt, which is that of the 5th of *May*, when he ſaith, he went to take Poſſeſſion of the Land that he held by Leaſe, then renewed to him by the Biſhop; which being of ſome Value to his Lordſhip, and the Biſhop being ſick, he thought it neceſſary to go down Poſt himſelf, and would not be content to receive Livery by Attornment. This is the only Anſwer that is given to all thoſe Times of his riding Poſt, that have been given in Evidence.

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Theſe are Matters of Suſpicion that are offered to your Lordſhips; but, I confeſs, Matters of Suſpicion only, unleſs clear, poſitive probable Proof be joined with them, will not weigh with your Lordſhips to convict a Man of High-Treaſon, where two Witneſſes are required. But Whether theſe Matters of Suſpicion be ſuch violent and neceſſary Preſumptions as tend to fortify the poſitive Teſtimony, I muſt leave that to the Conſideration of your Lordſhips.

Mr. Solicitor having finiſhed his Obſervations, The Lord High Steward, in his Directions to the Lord's Triers, ſaid, That he thought fit to rectify that Miſtake of the Priſoner's, that there was a Neceſſity of having two poſitive Witneſſes to convict a Man of Treaſon; for that there may be ſuch other ſubſtantial Circumſtances joined to one poſitive Teſtimony, that, by the Opinion of all the Judges of *England*, ſeveral Times has been adjudged and held to be a ſufficient Proof.

Then the Peers withdrew; and within half an Hour returned with their Verdict; that my Lord *Delamere* was NOT GUILTY.

Remarks on Lord Delamere's *Trial.*

There is not much queſtion to be made, but there was a Correſpondence between the Duke of *Monmouth* and the Lord *Delamere*. We find, that the Duke bent his March towards *Glouceſter*, in order to poſſeſs that Bridge, which would have opened a Communication with his *Cheſhire* Friends; but meeting with a Repulſe at *Briſtol*, and *Bath*, he was forced to return to *Bridgwater*; and the *Cheſhire* Gentlemen were ſo fortunate, as not to declare themſelves till the Duke was defeated.

The Evidence of *Saxon* might be true in the main; but it was plain he was miſtaken in Point of Time, and was a Man but of an indifferent Character, which gave the Lords a fair Handle to acquit his Lordſhip: But, had *Saxon*'s Teſtimony been credited, the Circumſtances ſworn to by the other Witneſſes were ſo ſtrong, that he might have been convicted upon them: Had the Lords Triers believed, that the Lord *Delamere* went out of Town on purpoſe to prepare Matters for the Reception of the Duke of *Monmouth*, and believed *Saxon*'s poſitive Teſtimony, that he was ſent by the Lord *Delamere* on a Meſſage to the Duke of *Monmouth*, who was then in actual Rebellion, they muſt have convicted him: Several Men have been convicted, both before and ſince, on Circumſtances that were not ſo ſtrong, when added to one poſitive Proof.

1686. 2 Jac. II.

The Trial between ARTHUR GODWIN, Plaintiff, and Sir EDWARD HALES, Bart. Defendant, *in an Action of Debt for* 500 *l. grounded upon the Act of* 25 Car. II. *for not taking the Oaths and Teſts*; in the Court of *King's-Bench*, *Paſch.* 1686. 2 *Jac.* II.

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Godwin *and* Hales.

The Declaration for the Penalty of 500 l. *incurred by the Defendant's not taking the Oaths.*

THIS was an Action popular brought againſt Sir *Edward Hales*, upon the Statute 25 *Car.* II. *cap.* 2. for the Penalty of 500 *l.* wherein the Plaintiff declares, That whereas it was provided by the ſaid Statute, that every Perſon in Office, *&c.* ſhall within three Months after his Admittance into ſuch Office, take the Oaths and Teſt, on Pain

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Pain of Diſability, and the Forfeiture of 500*l.* to him that will ſue for it: The Defendant, notwithſtanding, having a Commiſſion to ſerve the King as a Colonel of Foot, and not having taken the ſaid Oaths and Teſt, did execute the ſaid Office, and continue to act by colour of the ſaid Commiſſion, after the Expiration of the ſaid three Months, for which he was indicted and convicted at the Aſſizes for *Kent*, whereby the Action accrued to the Plaintiff for the Penalty of 500*l.*

A Diſpenſation pleaded.

The Defendant pleaded, That before the Time limited by the ſaid Acts was expired, he had a Diſpenſation under the Broad Seal, to act *Non obſtante* that Statute.

The Plaintiff demurs, and the Defendant joins in Demurrer.

To which Plea the Plaintiff demurred; and the Defendant joined in Demurrer.

Mr. Northey's *Argument for the Plaintiff.*

This Caſe coming to be heard before the Court of *King's-Bench*, Mr. *Northey*, who argued for the Plaintiff, inſiſted, That the Defendant could not be admitted to plead this Matter in Bar of the Action; becauſe he ought to have pleaded it to the Indictment; and he having not pleaded it, then the Law would conſtrue it to be a Waiving of the Pardon, as the Caſe was in *Brook's Abridgment*, *Charter of Pardon* 15. In Caſe of an Indictment for Murder, one that has pleaded Not guilty, cannot plead a Pardon afterwards, unleſs dated after the Plea of Not guilty: That this Action was in the Nature of an Execution on a Judgment; and if the Defendant ſhould be received to plead this Plea now, he would falſify the Indictment that was found againſt him; for, if the Offence was pardoned, he ought not to have been indicted.

But, admit the Defendant might plead this Plea, it was no Bar to the Plaintiff's Action; for though the King might diſpenſe with ſeveral Penal Laws in ſome Caſes, that Prerogative was bounded with ſome Statutes he could not diſpenſe, wherein the Subject was intereſted, 4 *Inſt.* 135. So the King could not licenſe a Man to make a Nuſance, or commit a Murder; and this was an Act wherein all the King's Subjects had an Intereſt.

The King could not diſpenſe with the Statute againſt Simony; or with the Statute againſt Buying and Selling of Offices: A Man that was diſabled to take an Office, the King could not capacitate him; and cited the Caſe of *Thomas* and *Sorrel*, *Vaughan* 534.

That by this Statute it was enacted, That every Officer ſhould take the Oaths; and if he neglected it, he was diſabled to hold his Office: And the King could never enable a Man whom the Law had diſabled, 3 *Inſt.* 154. As to the Caſe in 12 *Coke* 18. where it is ſaid, That no Act of Parliament can bind the King from any Prerogative which is ſolely and inſeparably annexed to his Perſon, but that he may diſpenſe with it by a *Non obſtante*; and the Inſtance in the Caſe of Sheriffs upon the Statute 23 *Hen.* VI. He held, That this Caſe was not Law: But, admitting it was Law, that could be no Rule to guide this Caſe by; for that Statute was made rather to deprive the King of his Power of making Sheriffs, and ſo conſequently commanding his Sheriffs not to ſerve him, than to diſable the Subject, and thereby reſtraining the King's Prerogative, which was ſo inherent in him.

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But by this Statute of 25 *Car.* II. the King's Prerogative was not touched; for the King might grant the Office to any of his Subjects; and it was only a Direction to the Subject to qualify himſelf for the King's Service: And, if he was incapable of ſerving the King, it was through his own Fault and Neglect, and he was puniſhable for the ſame, as in the Caſe of Sir *John Read*, in 27 & 28 *Car.* II. in the *Exchequer:* He was made and ſworn Sheriff of *Hertfordſhire*, and neglected to take the Oaths, by reaſon whereof the Office became void; and afterwards there was an Information exhibited againſt him upon this Statute, for neglecting to take the ſaid Oaths, and execute the ſaid Office; whereupon he was convicted, and fined. And the Court was of Opinion, that no Subject could put himſelf out of a Capacity to ſerve the King, but for ſo doing he was puniſhable: That in the Law relating to Sheriffs, the Diſpenſation was in the Patent; but in this Caſe the Diſpenſation was after the Patent, which made a Difference; and for theſe Reaſons, he prayed Judgment for the Plaintiff.

Mr. Solicitor's Argument for the Defendant.

Mr. Solicitor General, Sir *Thomas Powis*, argued on the other Side, and inſiſted, That though it was admitted the Defendant ought to have pleaded the Diſpenſation to the Indictment, it did not appear but that he did.

That, if they ſtood upon this as an Eſtoppel, they ought to have relied upon it, and replied, that he had the Diſpenſation at the Time of the Indictment, and refuſed to plead it.

And as to the ſecond Point, Whether the King can diſpenſe with the Statute? It was admitted, that the King might in many Caſes diſpenſe with an Act of Parliament: It was obſerved in 2 *Inſt.* 496. that the King's Prerogative was as much the Law of *England* as any other Law whatſoever; and the King may, upon any Cauſe moving him, in reſpect of Time, Place, or Perſon, by a *Non obſtante*, diſpenſe with any particular Perſon, ſo that he ſhall not incur the Penalty of the Statute. *Coke* 36, 37. *Vaughan* 333, 347. And *Glanvile*, in his Argument *p.* 205. admits a Power in the King to diſpenſe with Penal Laws: Though the Conſent of the Lords and Commons was required to the making an Act of Parliament, yet it was the King that gave Sanctions to the Laws: And moſt of the antient Statutes began in the Form of Charters or Grants, as appeared by 8 *Coke* 19. And the Intent and meaning of Acts of Parliament were every Day extended and altered by the Deciſions of the Judges, according to a better Rule of Reaſon and Juſtice than the Words would bear, *Hob.* 229. And Statutes which have been made againſt Common Right, have been conſtrued void. 8 *Coke* 118.

That there was a Diſtinction made in our Books between *Malum in ſe* and *Malum prohibitum*. The former the King cannot diſpenſe with; but the latter he may: As where the Statute generally prohibits any Thing under a Penalty, which was lawful before; there the King may diſpenſe with ſuch an Act, the Subject receiving no Injury by ſuch Diſpenſation, *Vaughan* 343. *Dyer* 5. 2. It was enacted, that none ſhould convey Wine into *England* out of *Gaſcony*, but in *Engliſh* Ships, and

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the King granted a Licence to one to import Wine in any Ships, notwithſtanding the Statute, 28 *Coke* 32. *Vaughan* 352, 353. That the Caſe in queſtion was a *Malum prohibitum*; neither was the Diſpenſation any Damage to the Subject: If it was a Wrong, it was to the King himſelf; and the King might diſpenſe with what related to himſelf.

Mr. Solicitor alſo diſtinguiſhed between Acts of Parliament which concerned Property, and thoſe which concerned Government: Acts of Parliament which concerned Property, he admitted, the King could not diſpenſe with; but thoſe which concerned Government he might; otherwiſe great Inconveniencies muſt often happen. There might be ſuch Exigencies of State, as might force him to it, ſuch as were unforeſeen at the Time of the making the Law: It might ſo happen by a Viciſſitude of Times, that thoſe Laws which were made for the Preſervation of the Government, might turn to the Deſtruction of the Government, if the King could not diſpenſe with them: By the Law of *England*, every Merchant was at Liberty to trade with Countries in Amity with *England*; and yet it was admitted on all Hands, if the King was apprehenſive of an Invaſion, he might lay an Embargo upon their Shipping, take their Men out of them, and put a Stop to their Trade, for the Defence and Preſervation of the whole Kingdom. The King alſo might dig in any Man's Lands for Salt-Petre, to enable him to defend the whole Kingdom: The common Law, in ſuch Caſes, had ſuch a Regard for the Prerogative, that the Intereſt of private Perſons was not conſidered.

That this Statute of 25 *Car.* II. was made indeed to diminiſh the King's Prerogative; but at the ſame Time to ſecure him from his Enemies, and for the Preſervation of the Government; and the King was the beſt Judge what was for his own Security, and the Preſervation of the Government.

No Act of Parliament could diſcharge the Subject from his Allegiance he owed the King; every one was bound to ſerve his Prince when required: Therefore no Act of Parliament could diſable any Man to ſerve the King.

But it was objected, That this did not make a Man incapable, but by his own Election: If this were ſo, it would be in the Election of one or all the King's Subjects, to incapacitate themſelves to ſerve the King, and ſo the King would be unſerved; as in the Caſe of Sir *John Read*, cited on the other Side: He neglected to take the Oaths, and ſo the Office of Sheriff became void; and if the next, and every other ſucceeding Sheriff, had neglected to take them, how could the King's Buſineſs, or the Buſineſs of the Country, have been done? There were ſeveral Statutes, which the King by his Prerogative might diſpenſe with: As the Statute of 36 *Hen.* VI. which enacted, That no Man ſhould be Sheriff of one County two Years: Yet it was reſolved by all the Judges, that the King might diſpenſe with it. The Statute of 4 *Hen.* IV. 31. enacts, That no *Welchman* ſhall be a Juſtice of Peace, or Civil Officer in *Wales*; and yet the King diſpenſes with it. The Statutes of 8 *Rich.* II. and the 33 *Hen.* VIII. 24. enact, That no Man ſhall be Juſtice of Aſſize in the County where he was born; and yet the King, by a ſpecial *Non obſtante*, diſpenſes with it.

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As to the Statutes mentioned, which the King could not diſpenſe with, as thoſe relating to Simony and Uſury; here was no Reſtriction of the Subject's Service; but the King might have the Benefit of it notwithſtanding: As to the Statute of 5 *Edw.* VI. 16, againſt buying and ſelling Offices; that Statute diſabled the Party on doing ſuch an Act to take an Office; the making the Bargain being prior to the taking of the Office; ſo that he could never legally have the Office veſted in him; which made a wide Difference between that Statute and this: Here the Defendant was actually poſſeſſed of the Office, and the King only diſpenſed with his taking the Oaths and Teſt: And for theſe Reaſons he prayed Judgment for the Defendant.

The Chief Juſtice delivers his Opinion.

The Chief Juſtice, in delivering his Opinion of this Caſe, ſaid, If the King could not diſpenſe with this Statute, he could not diſpenſe with any Penal Law: And he was of Opinion, the Defendant might plead this Diſpenſation and Pardon to the Action of Debt, though he did not plead it to the Indictment: For the Jury below might have gone againſt the Direction of the Court; and that ſhould not conclude the Court of *King's-Bench:* That this being urged as an Eſtoppel, it could not bind, becauſe the Plaintiff was not Party to the firſt Suit.

As to the ſecond Point, There was no Law whatever, which the ſupreme Law-giver might not diſpenſe with; as the Laws of God might be diſpenſed with by God, as was done in the Caſe of *Abraham*'s offering up *Iſaac*.

It was impoſſible for the wiſeſt Lawgiver, to foreſee all Caſes that may happen; and therefore there muſt be a Power lodged ſomewhere to diſpenſe with the Laws: As to the Caſe of Simony, he did agree it was *malum in ſe*; and therefore the King could not diſpenſe with it: Nor could he diſpenſe with the Statutes of Uſury, or Non-Reſidence, becauſe the Subject had a Benefit by the Obſervation of them: And as to the buying and ſelling Offices, the Party was diſabled *to take* any ſuch Office by the Contract; ſo that the Diſability was incurred, before the Office was veſted in him, which Diſability the King could not remove: And ſo he agreed it would have been in this Caſe, if the Defendant had, by his Neglect, or Refuſal to take the Oaths, rendered himſelf incapable, before he had received a Diſpenſation: But the King's Diſpenſation, coming before the Diſability incurred, did prevent it.

That the Caſe of a Sheriff was much ſtronger than this; for that Statute diſabled the Party to take, and the King to grant; and ſays expreſly the King ſhall not diſpenſe with it by a *Non obſtante*; and yet it was the Opinion of all the Judges of *England*, That the King had Power to diſpenſe with that Statute, which had been accounted good Law, ever ſince the Reign of *Hen.* VII. and never queſtioned till now: The Practice had ever been, according to that Reſolution: And, if that were not Law, ſome Sheriffs would not be lawful Sheriffs; and conſequently

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ſequently could have no Power to return *Jones*; nor had the Judges Power conſequently, to try and give Judgment upon Offenders; they ſhould take the Opinion therefore of the reſt of the Judges: And, if that Caſe was not Law, the Judges Patents, who went into their own Counties, were alſo illegal; for their Patents were *Non obſtante's* to 23 *Hen.* VIII. 34. and ſo they had no Authority to go their Circuits.

His Lordſhip, having conſulted the Judges, delivered their Opinions in open Court, on *Monday* the 21ſt of *June*, in the following Manner.

The Judgment of the whole Court of King's-Bench.

In the Caſe of *Godwin* and *Hales*, wherein the Defendant pleads a Diſpenſation from the King, It is doubted, whether or no the King had ſuch a Prerogative? Truly, upon the Arguments before us, it appeared as clear a Caſe as ever came before the Court: But becauſe Men fancy I know not what Difficulty, when really there is none, we were willing to give ſo much Countenance to the Queſtion in this Caſe, as to take the Advice of all the Judges of *England:* They were all aſſembled at *Serjeant's-Inn*, and this Caſe was put to them; and the great Caſe of the Sheriff's was put, Whether the Diſpenſation in that Caſe were legal? becauſe upon that depended the Execution of all the Law of the Nation: And I muſt tell you, that there were ten upon the Place that clearly delivered their Opinions, That the Caſe of the Sheriffs was good Law; and, that all the Attainders grounded upon Indictments, found by Juries returned by ſuch Sheriffs, were good and not erroneous; and conſequently, that Men need not have any Fears or Scruples about that Matter. And, in the next Place, they did clearly declare, that there was no imaginable Difference between that Caſe and this; unleſs it were, that this were the much clearer Caſe of the two, and liable to the fewer Exceptions.

My Brother *Powel* ſaid, He was inclined to be of the ſame Opinion: But he would rather have ſome more Time to conſider of it: But he has ſince ſent my Brother *Holloway*, to let us know that he does concur with us. To theſe eleven Judges there is one Diſſenter, Brother *Street*; who yet continues his Opinion, That the King cannot diſpenſe in this Caſe: But that is the Opinion of one ſingle Judge, againſt the Opinion of eleven. We were ſatisfied in our Judgments before; and having the Concurrence of eleven out of twelve, we think we may very well declare the Opinion of the Court to be, That the King may diſpenſe in this Caſe; and the Judges go upon theſe Grounds.

Five Reſolutions of the Judges.

1. That the Kings of *England* are Sovereign Princes.

2. That the Laws of *England* are the King's Laws.

3. That, therefore, it is an inſeparable Prerogative in the Kings of *England*, to diſpenſe with penal Laws in particular Caſes, and upon particular neceſſary Reaſons.

4. That of thoſe Reaſons, and thoſe Neceſſities, the King himſelf is ſole Judge: And then, which is conſequent upon all.

5. That this is not a Truſt inveſted in, or granted to the King by the People; but the antient Remains of the Sovereign Power and Prerogative of the Kings of *England*; which never yet was taken from them, nor can be. And therefore ſuch a Diſpenſation, appearing upon Record to come Time enough to ſave him from the Forfeiture, Judgment ought to be given for the Defendant.

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Quod querens nil capiat per billam.

The Chief Juſtice's Vindication of this Judgment.

The Chief Juſtice, Sir *Edward Herbert*, being very ſeverely reflected on for this Judgment, as if he had thereby eſtabliſhed a Diſpenſing Power, and entirely ſubverted the *Engliſh* Laws and Conſtitution, publiſhed a Vindication of it.

And firſt, to ſhew what this Diſpenſing Power was, he cited the Caſe in the Lord *Coke*'s 11th Report, Pag. 88. where it is ſaid, *Diſpenſatio mali prohibiti eſt, de jure Domino Regi conceſſa propter impoſſibilitatem prævidendi de omnibus particularibus:* And *Diſpenſatio eſt mali prohibiti provida relaxatio, utilitate, ſeu neceſſitate penſata:* For true it is, (ſays the Book), That inaſmuch as an Act of Parliament, which generally prohibits any Thing upon a Penalty that is popular, or only given to the King, may be inconvenient to divers *particular Perſons*, in Reſpect of Perſon, Time, or Place; for this Purpoſe, the Law gives a Power to the King, to diſpenſe with *particular Perſons:* And in the 7th *Rep.* p. 63. in the Caſe of Penal Statutes, it was reſolved 2 *Jac.* I. by all the Judges of *England*, That the King may diſpenſe with any particular Perſon: That he ſhall not incur the Penalty of the Statute, though it be an Act made *pro bono publico:* And that this is a Truſt and Confidence inſeparably annexed to the Royal Perſon of the King. He cited theſe two Caſes, he ſaid, To ſhew that a Diſpenſation was, in its own Nature, particular, and given to particular Perſons by Name; which was all the Power that was aſcribed to the King, by their Judgment. And it was an unreaſonable Miſtake in People, who talked of a diſpenſing Power: As if the King's Declaration of Liberty of Conſcience (whereby all the Laws that concern Religion, were at once totally ſuſpended, and laid to Sleep) were warranted by it; whereas this Caſe had no Reſemblance of that.

Then he cites the Caſe in the Year-Books of *Hen.* VII. Fol. 11. & *Hen.* VII. Fol. 12. which ſay, The King may diſpenſe with a prohibited Evil; though not with that which was evil in itſelf: And *Vaughan*'s Reports, in the Caſe of *Thomas* and *Sorrel*, p. 333, who diſcourſing of this Caſe, ſhews, how a Diſpenſation differs from a Pardon.

That a Diſpenſation does *Jus dare*, and makes a Thing, prohibited to all others, lawful to be done by him that hath it: And therefore the King cannot diſpenſe with *mala in ſe*; becauſe they never were, and can never be lawful.

From which Caſes he forms this Syllogiſm; Whatever is not prohibited by the Law of God, but was lawful before any Act of Parliament made to forbid it; the King, by his Diſpenſation granted to a particular Perſon,

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may make lawful again to that Perſon, who hath ſuch Diſpenſation, though it continues unlawful to every body elſe: But to execute any Office without taking the Oaths and the Teſt, antecedent to any Act of Parliament made to forbid it, was lawful.

Therefore the Diſpenſation granted to Sir *Edward Hales*, did make it lawful for him to do ſo; though it continued unlawful for any body elſe.

In this Argument, the Premiſes were none of their own, he obſerved: The Authority of the Books they had them from, were never queſtioned; and it could not be criminal in the Judges, to draw a neceſſary Concluſion from Premiſes andBook-Caſes, that have been taken for Law ſo many Ages.

Then he cited the aboveſaid Caſe, Where it was reſolved by all the Judges of *England*, 2 *Hen.* VII. That the King might diſpenſe with the Statute of 23 *Hen.* VI. which enacted, *That no Man ſhould be Sheriff for above one Year.*

That this Caſe had been cited, as adjudged in ſeveral Books of great Authority; and it had been the conſtant Practice to have Diſpenſations in all Kings Reigns, ever ſince that Reſolution.

Then, having anſwered ſome leſs material Objections that were made to this Doctrine, he comes to the grand Point, namely, *That if the King have a Power to diſpenſe with one, he may diſpenſe with twenty, or with an hundred; and ſo the Deſign of the Statute would be entirely defeated.*

The grand Objection.

To this the Chief Juſtice anſwers, That from the Abuſe of a Thing, to draw an Argument againſt the Thing itſelf, is no Conſequence at all. It muſt be acknowledged, that there was a high Truſt repoſed in the King; and if theKing would violate his Truſt, there were none of his Prerogatives but might be abuſed, to the Ruin of his People; of which he gave theſe Inſtances.

1. He obſerved, That it was granted, the King might pardon Murder or Robbery; and yet, if the King ſhould pardon everyMurder and every Robbery, it were better to live among Savages.

2. The King might create any Man a Peer, and thereby give him a Vote in Parliament: And if the King ſhould abuſe his Power, ſo far as to create 10,000 Peers, or confer that Honour upon every body that asked it; noDoubt, but this would tend to the Deſtruction of the Conſtitution: And yet, in either of theſe Caſes, if the Judges ſhould determine, the King had ſuch a Prerogative, it would be unreaſonable to object, That theſe Prerogatives might be abuſed; and therefore the Judges had given a pernicious Judgment.

When they gave Judgment in Sir *Edward Hale*'s Caſe, they could neither know, nor prevent (if they did) any ill Uſe the King might make of his Power: They could only ſay upon their Oaths, whether the King had ſuch a Power or not; and for this they had not only the great Authorities above cited; but much greater than thoſe, namely, two Conceſſions of all the Commons of *England* aſſembled in Parliament, That this diſpenſing Power was lodged in the King; and that too, when they were contending with the Crown, about the Violation of the Laws.

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1. The firſt was *Rot. Parl.* 1. *Hen.* V. *n.* 15. *Tit. Prerogative.* "There the Commons pray, That the Statute for voiding Aliens out of the Kingdom, may be kept: To which the King agrees, ſaving his Prerogative, That he may diſpenſe with whom he pleaſes; and upon this the Commons anſwered, That their Intent was no other, nor ever ſhould be, by the Grace of God. And in the ſame Parliament, when the Commons prayed, That the Statutes of Proviſors, Statutes of the ſame Nature as that in this Caſe, (for they were made againſt the Court of *Rome*'s encroaching Juriſdiction in *England*); when they prayed, That theſe might be put in Execution; they themſelves inſerted in their Petition, a Saving for the King's Prerogative, and then he agreed to it.

2. "The next and plaineſt Conceſſion of the Commons, is 3 *Car.* I. upon a Debate between the two Houſes, concerning the Petition of Right: Where the Commons ſay, p. 205. There is a Truſt inſeparably repoſed in the Perſons of the Kings of *England*; but that Truſt was regulated by Law: For Example, Where Statutes were made to prohibit Things, not *mala in ſe*, but only *mala quia prohibita*, under certain Forfeitures and Penalties, to accrue to the King, and to the Informers that ſhall ſue for the Breach of them; The Commons muſt, and ever will, acknowledge a Regal and Sovereign Prerogative in the King, touching ſuch Statutes: That it is in his Majeſty's abſolute undoubted Power to grant Diſpenſations to particular Perſons, with the Clauſes of *Non obſtante*, to do as they might have done before thoſe Statutes, wherein his Majeſty's conferring Grace and Favour to one, does no Wrong to others: But there is a Difference between thoſe Statutes, and the Laws and Statutes whereon the Petition is grounded: By thoſeStatutes, the Subject has no Intereſt in the Penalties (which are all the Fruit ſuch Statutes can produce, until by Suit or Information, he become entitled to the particular Forfeitures); whereas the Laws and Statutes mentioned in the Petition, are of another Nature: Laws not inflicting Penalties on Offenders, *in malis prohibitis*; but Laws conferring or confirming an inherentRight and Intereſt of Liberty and Freedom on the Subjects of this Realm, as their Birth-Rights and Inheritances deſcendible to their Heirs and Poſterity; Statutes Incorporate in the common Law, over which, with Reverence be it ſpoken, there is no Truſt in the King's Sovereign Power, or Prerogative Royal, to enable him to diſpenſe with them; or to take from his Subjects, that Birth-Right or Inheritance which they have in their Liberties, by Virtue of the common Law, and of theſe Statutes.

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As to that Objection, That this Law was made for the Intereſt of Religion; and all Offences againſt Religion were *mala in ſe*, and therefore not to be diſpenſed with:

He anſwered, It was true, That all Offences directly againſt Religion, as it was conſtituted ſuch by the divine Law, were *mala in ſe*, and not to be diſpenſed with; and in this Caſe the Parliament was bound, as well as the King; an Act of Parliament made in that Senſe, againſt Religion, was utterly void: But human and politick Conſtitutions, though made for the Intereſt of Religion; as they had a Beginning, ſo they were alterable by the ſame Power that made them. The King might diſpenſe with a Prieſt's holding two Benefices, though the Laws againſt Pluralities were made for the Intereſt of Religion; and he might diſpenſe with a Baſtard's entering into Prieſt's Orders.

But he found it was further objected, That though theſe high Truſts and Prerogatives might be allowed to a Proteſtant Prince; yet, the acknowledging them to be veſted in a Prince of a contrary Religion to that eſtabliſhed by Law, muſt end in the Deſtruction of that eſtabliſhed Religion.

To which he anſwered, That the Promoters of the Bill of Excluſion urged the ſame Argument: If you leave him King (ſaid they), he will have all the Prerogatives of a King, and thoſe Prerogatives may be made inſtrumental, to the Ruin of your Religion; which could not be denied by the Gentlemen on the other Side, that oppoſed that Bill: Their only Reply was, *Fiat Juſtitia, ruat Cœlum:* It is his Right, and we muſt not do Evil that Good may come: we muſt not do Wrong, no not to promote the Intereſt of Religion itſelf.

The ſame Argument, (ſays the Chief Juſtice), that weighed with them, to aſſert the Right of Succeſſion to the Crown; and conſequently to all Prerogatives together, was the Rule we had to guide us in giving Judgment in this Caſe, concerning a particular Branch of them. We muſt not break our Oath, or give Judgment contrary to what ſeemed to us to be Law, let the Conſequence be what it will.

Laſtly, he obſerved, it had been objected, That all this was a Contrivance, an Informer ſet up; and all but a feigned Action.

1686. 2 Jac. I.

But he could truly ſay, he never heard of this Action till it was actually brought; however, he ſaw no Hurt in it, if it had been ſo: The Law was well tried, and ſettled in a feigned Action, as in a true: There were feigned Actions directed every Day out of *Chancery* for this Purpoſe; and why the King might not direct ſuch an Action to be brought to ſatisfy himſelf, whether he had ſuch a Power; and, if he had, that the People might acquieſce in it, he could not conceive: And, if there were any indirect Means uſed for obtaining Opinions, he declared he knew nothing of it: He ſtood upon his Innocence; and defied all the World to lay any Thing of this Nature to his Charge.

Remarks on the Trial of Godwin *and* Hales.

It ſeems to be admitted on all Hands, that where the Subject had any Property or Intereſt veſted in him by a Statute, the King could not diſpenſe with ſuch Statute: And, if this be ſo, ſurely the King cannot diſpenſe with a Statute, in which *all* or *moſt* of his Subjects are concerned in Point of Intereſt; with a Statute made for the Preſervation of that Religion, which is a Part of our Conſtitution; and by the ſuſpending whereof, the Enemies of the Government are let in to ruin it: Had not King *James* Proteſtant Subjects enough (ſays Sir *Robert Atkins*) to bear Offices? and are Popiſh Recuſants the fitteſt Perſons to be truſted with the Defence of the Proteſtant Religion, and with our Lives and Eſtates; which are all concerned more or leſs in every publick Office and Truſt?

Are thoſe Perſons, who have a Dependance on the See of *Rome*, and a foreign Power, fit to be truſted with the Militia, with our Fortreſſes and Sea-Ports? Is not this to commit the Lamb to the Cuſtody of the Wolf?

The Act of 25 *Car.* II. is not levelled againſt the *Opinions* of the Roman Catholicks; they may keep their Religion ſtill, if they like it. But is there any Neceſſity of their being in Offices: Muſt they needs be Guardians of the Proteſtant Religion? The Penalties laid on them by this Act, as has been obſerved, is not purely for their Opinion, but for their preſuming to undertake Offices and Truſts, for which they have been adjudged and declared unfit, both by King and Parliament. I ſhall only add, That the very ſame Arguments hold againſt admitting the Diſſenters of any Kind into Offices and Places of Truſt.

The

1686. 2 Jac. II.

The Trial of SAMUEL JOHNSON, Clerk, for a *Miſdemeanor*, before the Court of *King's-Bench*, on the 21ſt of *June*, 1686. 2 *Jac.* II.

1686. 2 Jac. II.

Johnſon's *Trial.*

The Indictment.

THIS is a very imperfect Piece. The Editors of the *State-Trials* only tell us, an Information was preferred againſt Mr. *Johnſon* for a Miſdemeanor, in publiſhing two ſeditious Libels: The one, *An Addreſs to the Army and Navy*; inciting the Soldiers to mutiny againſt their Popiſh Officers, and not to be made Tools to introduce Popery: And the other declaring that Reſiſtance was lawful, where their Religion and Rights were invaded.

His Conviction, and Sentence.

Of which being convicted, he was ſentenced to pay 500 Marks, to ſtand three Times in the Pillory, and to be whipped from *Newgate* to *Tyburn:* That he was afterwards degraded by the Biſhops of *Durham*, *Rocheſter*, and *Peterborough*; and then whipped with a Whip of nine Cords, and received 317 Laſhes.

The Execution of it.

The Judgment voted cruel and illegal.

That after the Revolution, *viz.* on the 11th of *June* 1689, the Parliament voted, That the Judgment given againſt Mr. *Johnſon*, was illegal and cruel; and that the degrading him by a Power derived from the High Commiſſion, was illegal.

300 l. per Ann. ſettled on him by King William.

That he was recommended to King *William* for Preferment; but never had any given him: However, that Prince ſettled three hundred Pounds a Year upon him out of the *Poſt-Office* for his own and his Son's Life; gave Mr. *Johnſon* a thouſand Pounds in Money, and his Son a Place of an hundred Pounds *per Annum*.

1686. 2 Jac. II.

Proceedings againſt HENRY Lord Biſhop of *London*, before the Lords Commiſſioners, appointed by his Majeſty to inſpect Eccleſiaſtical Affairs, *Anno* 1686. 2 *Jac.* II.

1686. 2 Jac. II.

Biſhop of London's *Proſecution.*

The Authority of the High-Commiſſion.

THE King's Eccleſiaſtical Commiſſion was directed to *William* Lord Archbiſhop of *Canterbury*, *George* Lord *Jeffries* Lord High Chancellor, *Lawrence* Earl of *Rocheſter* Lord Treaſurer, *Robert* Earl of *Sunderland* Lord Preſident of the Council and Principal Secretary of State, *Nathanael* Lord Biſhop of *Durham*, *Thomas* Lord Biſhop of *Rocheſter*, and Sir *Edward Herbert* Lord Chief Juſtice; who were impowered to exerciſe all Manner of Eccleſiaſtical Juriſdiction, and puniſh all Offences puniſhable by the Eccleſiaſtical Laws, and to correct and alter the Statutes in the Univerſities, and of all Cathedrals, Colleges, and Schools, *&c.*

The Biſhop's *Caſe.*

The Caſe of the Biſhop of *London* was this: Mr. *Atterbury*, the Meſſenger, delivered a Letter from his Majeſty to his Lordſhip on the 17th of *June*, 1686, wherein the King obſerved, That, notwithſtanding his Directions concerning Preachers, dated the 15th of *March*, 1685, Dr. *John Sharp* had, in ſome Sermons, preſumed to make unbecoming Reflections, and uſed ſuch Expreſſions, as tended to beget in the Minds of his Hearers, an evil Opinion of his Majeſty and his Government, and to diſpoſe the People to Rebellion; and therefore commanded the Biſhop to ſuſpend the ſaid Dr. *John Sharp* from preaching, till his Majeſty's Pleaſure were further known.

In anſwer to which my Lord Biſhop of *London* wrote to my Lord *Sunderland* the next Day, being the 18th of *June*, and ſent the Letter by Dr. *Sharp*; wherein he acquaints my Lord *Sunderland*, "He was concerned "he could not comply with his Majeſty's "Commands: That being to act as a Judge "in this Caſe, he could not condemn the "Dr. till he had been cited, and he had "Knowledge of the Cauſe; but that he had "ſent to the Dr. and acquainted him with his "Majeſty's Diſpleaſure; and found him ſo "ready to make all reaſonable Satisfaction, "that he thought fit to make him the Bearer "of this Anſwer."

The *Sunday* following Dr. *Sharp* carried a Petition to *Windſor*, which was not permitted to be read.

On *Wedneſday*, the 4th of *Auguſt*, 1686, my Lord Biſhop of *London*, upon a Summons, appeared before the Commiſſioners at the Council-Chamber at *Whitehall:* Preſent the Lord Chancellor, Lord Biſhop of *Durham*, Lord Treaſurer, Lord Biſhop of *Rocheſter*, Lord Preſident, and Lord Chief Juſtice *Herbert*.

The Lord Chancellor demanded, Why my Lord Biſhop of *London* had not ſuſpended Dr. *Sharp*, according to the King's Command?

The Lord Biſhop of *London* anſwered, That he was adviſed, he could not legally do it but by Way of Citation, and hearing him.

Lord Chancellor. You ought to have known the Law better: The King is to be obeyed; and, if you have any Reaſons to offer, we are ready to hear you.

The Lord Biſhop of *London* deſired a Copy of their Commiſſion, and a Copy of his Charge: And, if he might not have a Copy of their Commiſſion, that he might read it, or hear it read. Then he was ordered to withdraw; and being called again in about a Quarter of an Hour, the Lord Chancellor acquainted him, That the Commiſſioners were of Opinion, his Requeſt could not be granted: That, if every one that appeared there ſhould demand a Sight of their Commiſſion, their whole Time would be taken up in reading of it: That the Proceedings of Courts of this Kind were not by Libels and Articles, but by Word of Mouth: And it was a ſhort Queſtion only they asked; *Why he did not obey the King?*

My

1686. 2 Jac. II.

My Lord Biſhop of *London* deſired the Commiſſioners to conſider, he was a Peer, and a Biſhop; and he deſired to behave himſelf as becomes one in thoſe Capacities; and hoped, they would give him Time till the next Term to make his Defence.

The Commiſſioners ſaid, they thought that unreaſonable; but they would give his Lordſhip a Week's Time; and then adjourned to the 9th of *Auguſt*.

On the 9th of *Auguſt*, the ſame Commiſſioners being preſent, my Lord Biſhop of *London* came before them, attended by his Nephew, the Earl of *Northampton*, Sir *John Nicholas*, and his Brother, Sir *Francis Compton*.

My Lord Biſhop of *London* ſaid, He had not been able to meet with their Commiſſion till the Night before; though he was told, he might ſee it in every Coffee-Houſe.

The Lord Chancellor anſwered, They would admit no quarrelling at their Commiſſion; they were well aſſured of the Legality of it, or they would not be ſuch Fools to ſit there.

My Lord Biſhop of *London* ſaid, He deſired a Sight of their Commiſſion, becauſe, poſſibly, it might not reach him, being a Peer, and a Biſhop; and that he had not had Time to adviſe about it; and therefore deſired a Fortnight longer, (which was granted).

On *Tueſday*, the 23d of *Auguſt*, my Lord Biſhop of *London* appeared before the ſame Commiſſioners again.

Lord Biſhop. My Lord, I have conſulted thoſe that are very learned in the Laws, who tell me, that your Proceedings in this Court are directly contrary to the Statute Law; and they are here to plead it, if your Lordſhip will admit them.

Lord Chancellor. We will neither hear your Lordſhip, nor your Counſel, in the Matter: We are ſufficiently ſatisfied of the Legality of our Commiſſion.

Lord Biſhop. My Lord, I am a Biſhop of the Church of *England*; and by all the Law in the Chriſtian Church in all Ages, and by the particular Law of this Land, I am, in caſe of Offence, to be tried by my Metropolitan and Suffragans: I hope your Lordſhip will not deny the Rights and Privileges of Chriſtian Biſhops.

Lord Chancellor. My Lord, you know our Proceedings are according to what has been done formerly, and that we have an Original Juriſdiction: This is ſtill queſtioning our Court.

Lord Biſhop. My Lords, Proteſting in my own Right to the Laws of the Realm, as a Subject, and the Rights and Privileges of the Church, as a Biſhop, I ſhall give in my Anſwer.

The Anſwer was accepted, and the Biſhop withdrew; and after half an Hour the Biſhop and his Counſel were called in; who were Dr. *Oldys*, Dr. *Hodges*, Dr. *Price*, and Dr. *Newton*; whom the Biſhop deſired might be heard.

The Arguments of the Biſhop's Counſel.

They argued, That the Words of the King's Letter being, *That you ſuſpend him from Preaching*; this could not be done by our Laws without a Citation, and proceeding to Judgment thereupon: But if by that Expreſſion, only the Silencing the Dr. was intended, then the Biſhop had executed the King's Command in ſuch a Method, as is obſerved in their Courts. 1686. 2 Jac. II.

For where an eminent Perſon is accuſed, the Judges ſend him a Letter; and if he appears, and complies with the Judges Order, the Law is ſatisfied. Here the Biſhop ſent for Dr. *Sharp*, and adviſed him not to preach, till the King had received Satisfaction; and he had obſerved his Lordſhip's Directions, and has not preached to this very Day; ſo that his Majeſty's Command was in Effect fulfilled. That the Biſhop had done what was his Duty; he was bound to return his Reaſon to the King, why he did not do that which he commanded, and to expect his further Anſwer; which was done.

That if a Prince, or Pope, command any Thing unlawful, it is the Duty of a Judge *Reſcribere Principi*, and attend his further Pleaſure; and this is all he can do: That as in Nature no Man can be obliged to do that which is impoſſible, ſo in Policy no Man can be obliged to do an unlawful Act.

Lord Biſhop. If through Miſtake I have erred in any Circumſtance, I am ready to beg his Majeſty's Pardon; and ſhall be ready to make any Reparation I am capable.

The Biſhop withdrew for half an Hour, and then was called in, and acquainted, that the Commiſſioners would be there again on *Wedneſday* next, when his Lordſhip was directed to attend.

Die Lunæ, 6 *Septem.* 1686.

Lord Chancellor. You were deſired to appear this Day to hear your Sentence; which, to prevent Miſtake, we have ordered to be put in Writing. *He is called to hear his Sentence.*

Lord Biſhop. My Lord, may I have leave to ſpeak, before Sentence is read?

Lord Chancellor. My Lord, we have heard you and your Counſel already.

Then the Inſtrument of Suſpenſion was read by Mr. *Bridgman*, their Lordſhips Regiſter, *viz.*

By his Majeſty's Commiſſioners for Eccleſiaſtical Affairs, &c.

The Sentence.

Whereas, Henry *Lord Biſhop of* London, *hath been convened before us for his Diſobedience, and other his Contempts, mentioned in the Proceedings of this Cauſe; and the ſaid Biſhop being fully heard thereupon, We have thought fit, upon mature Conſideration of the Matter, to proceed to this our Definitive Sentence; declaring, pronouncing, and decreeing, That the ſaid* Henry, *Lord Biſhop of* London, *ſhall, for his ſaid Diſobedience and Contempt, be ſuſpended during his Majeſty's Pleaſure: And accordingly we do, by theſe Preſents, ſuſpend him the ſaid Lord Biſhop of* London; *peremptorily admoniſhing and requiring him, hereby, to abſtain from the Function and Execution of his Epiſcopal Office, and from all Epiſcopal and other Eccleſiaſtical Juriſdiction, during the ſaid Suſpenſion, upon Pain of Deprivation and Removal from his Biſhoprick.*

1686. 2 Jac. II.

Dr. Sharp *ſuſpended, & reſtored.*

Doctor *Sharp* was alſo ſuſpended for a Time; but ſuffered afterwards to preach and exerciſe his Function again.

The Biſhop's Suſpenſion taken off.

And the Biſhop of *London*'s Suſpenſion was taken off in the Year 1688, upon Advice of the Prince of *Orange's* intended Imbarkation to invade *England*.

1686. 2 Jac. II.

The Remarks on this Proſecution of the Biſhop of London, *will be found intermixed with thoſe on the Trials of the Seven Biſhops, in the Year,* 1688.

Proceedings againſt the Univerſity of *Cambridge*, for not obeying the King's Mandate, in the Year 1686. 3 *Jac.* II.

1686. 3 Jac. II.

1686. 3 Jac. II.

The Caſe of the Univerſity of Cambridge.

THE Univerſity received a Letter Mandatory by *Atterbury* the Meſſenger, from his Majeſty, on the 9th of *February* 1686-7, commanding them to admit *Alban Francis*, a *Benedictine* Monk, to the Degree of Maſter of Arts, without adminiſtring to him any Oath whatever: Whereupon the Senate being aſſembled, reſolved to ſend up their Senſe of this Matter to Doctor *Peachel*, the Vice-Chancellor, who was then in *London* and Doctor *Smoult*, Profeſſor of Divinity, was made Choice of by the Non-Regents, and Mr. *Norris*, Fellow of *Trinity*-College, by the Regents, to carry the Meſſage; the Subſtance whereof was, That the Houſe apprehended the Admiſſion of Mr. *Francis*, without his taking the uſual Oaths, was illegal and unſafe, and adviſed the petitioning his Majeſty upon it; declaring they were ready to join in the Petition, and make it their Act: And the Beadles were ordered to acquaint Mr. *Francis*, that the Senate were ready to admit him, provided he would take the Oaths. But Father *Francis* refuſed, inſiſting on the King's Diſpenſation.

The ſame Afternoon the Heads met, and ſent a Letter to the Duke of *Albemarle*, their Chancellor, and another to the Earl of *Sunderland*, Secretary of State, by their Beadles; but they could not get Admiſſion to the Earl of *Sunderland:* And ſoon after the Univerſity receiv'd another Letter from the King, dated the 24th of *February*, exactly the ſame as the Former, only with this Addition, That they ſhould do it at their Peril. Whereupon a Letter was prepared for the Duke of *Albemarle*, and another for the Lord *Sunderland*, and ſent up by Mr. *Craddock*, Fellow of *Catherine-Hall*, and Mr. *Stanhope* of *King's* College; and on *Sunday* the 3d of *March*, theſe Gentlemen waited on the Duke of *Albemarle*, who attended the King on Behalf of the Univerſity on the 14th, when his Majeſty commanded his Grace to give him the Letter he received from the Univerſity; which he did, but received no Anſwer. They afterwards attended the Lord *Sunderland*, who told them, the King had ſeen the Vice-Chancellor's Letter, and was offended at the Proceedings of the Univerſity, and would ſhortly give them a further Anſwer: But they received no other Anſwer till *Sunday* the 9th of *April*, when *Atterbury* the Meſſenger came down to *Cambridge* with a Summons for the Vice-Chancellor to appear in Perſon, and the Senate by themſelves, or their Deputies, before the Lords Commiſſioners for Eccleſiaſtical Affairs, in the Council Chamber, on the 21ſt of *April*, to Anſwer ſuch Things as ſhould be objected againſt them by his Majeſty.

Summoned to appear before the High Commiſſion.

Whereupon the Senate deputed Dr. *John Peachel*, Vice-Chancellor; Dr. *John Eachard*, Maſter of *Catherine-Hall*; Dr. *Humphery Babington*, Fellow of *Trinity* College; Dr. *Thomas Smoult*, Fellow of St *John*'s College; Doctor *William Cook*, Doctor of Civil Law, and Fellow of *Jeſus* College; Mr. *John Billers*, Fellow of St. *John*'s, and publick Orator; Mr. *Iſaac Newton*, Fellow of *Trinity* College, and Mathematical Profeſſor; Mr. *James Smith*, Fellow of *Queen's*; and Mr. *George Stanhope*, Fellow of *King's* College.

The Deputies that attended.

Theſe Deputies appearing in the Council-Chamber on *Thurſday* the 21ſt of *April*, before the Lord Chancellor *Jeffries*, the Lord *Sunderland*, Preſident, the Lord *Mulgrave*, the Earl of *Huntington*, the Biſhops of *Durham* and *Rocheſter*, and the Lord Chief Juſtice *Herbert*, Eccleſiaſtical Commiſſioners, the Summons was read; after which the Lord Chancellor demanded of Mr. Vice-Chancellor, Why he had not obeyed his Majeſty's Commands in admitting Mr. *Francis?*

The Names of the High Commiſſioners.

The Vice-Chancellor examined.

Mr. Vice-Chancellor anſwered, it was a Matter of great Concern, and deſired they might have Counſel and Time to prepare their Anſwer; and Time was given them till the *Wedneſday* following.

The Vice-Chancellor, *&c.* appearing again before the ſame Commiſſioners on *Wedneſday* the 27th of *April*, put in their Anſwer, which was entitled, *The Anſwer of the Univerſity and Senate of* Cambridge *to the Queſtion, Why they did not admit* Alban Francis *to the Degree of Maſter of Arts, without taking the ſaid Oaths*, &c.

The Anſwer of the Univerſity.

They anſwer, that by the Statutes of the 1ſt and 5th of *Eliz.* every Perſon, promoted to a Degree in the Univerſity, is required to take the Oath of Supremacy; and by 3 *Jac.* I. the Oath of Allegiance, That the Vice-Chancellor, and every Member of the Senate, had taken the ſaid Oaths, and were entruſted to ſee others take them in the Univerſity: And that in order to admitting the ſaid *Alban Francis* to the Degree of Maſter of Arts, the ſaid Oaths were offered to be adminiſtered to him; but he refuſed to take them.

That the admitting him without taking the ſaid Oaths, would have been contrary to the ſaid Statutes, and a Breach of Truſt in the Vice-Chancellor and Senate; and whether this Matter was proper for their Lordſhips Cognizance, they entreated them to conſider inaſmuch as the taking the Degree of Maſter of Arts in the Univerſity, or the admitting and refuſing ſuch a Degree, was not a Matter Eccleſiaſtical

1686. 3 Jac. II.

Eccleſiaſtical, but of Lay and Temporal Cognizance.

And it was alſo enacted by a Statute of the 16 *Car.* I. That no new Court ſhould be erected within this Realm, which ſhould have like Power as the High Commiſſion Court then had, or pretended to have; but that every ſuch Commiſſion and Grant ſhould be void.

A further Examination.

The Anſwer being read, the Deputies were ordered to withdraw; and appearing at the Council-Chamber again on the 27th of *May*, the Lord Chancellor obſerved, that they alledged that their Oath prevented their obeying the King's Mandate, and demanded what that Oath was.

The Vice-Chancellor anſwered, He could not remember the very Words; but the Subſtance of it was, That he ſhould well and faithfully *præſtare*, or *adminiſtrare*, *munus*, or *officium*, *Procancellarium*.

Lord-Chancellor. And do not you remember any Maſter of Arts made without Oaths?

Dr. Cook. Not under the Quality of an Univerſity-Nobleman.

Lord-Chancellor. Nay, good Doctor, you never were Vice-Chancellor yet; when you are, we will conſider you.

Vice-Chancellor. I cannot ſay I remember any.

Lord Chancellor. Did you never hear of Dr. *Lightfoot*?

Vice-Chancellor. My Lord, he did ſubſcribe the Thirty-nine Articles; and the Firſt of them is the King's Supremacy.

Lord Chancellor. And is Subſcribing Swearing, Doctor?

Mr. *Stanhope.* As for Dr. *Lightfoot*, we were aware of that Objection, and therefore have provided an Anſwer to it, and are ready to make Proof that he did ſwear.

Lord Chancellor. Nay, look you now, that young Gentleman expects to be Vice-Chancellor too: When you are, Sir, you may ſpeak; but till then it will become you to forbear. Mr. Vice-Chancellor, when was it you received the Firſt of the King's Letters?

Vice-Chancellor. It was on *Aſhwedneſday*.

Lord Chancellor. When you had read the Letter, why was not the Gentleman admitted?

Vice-Chancellor. The Senate ſent to deſire me I would forbear admitting Mr. *Francis*, till I had petitioned the King to revoke the Mandate.

Lord Chancellor. Did you ever know any Mandate of the King's refuſed by the Univerſity before?

Vice-Chancellor. Yes, my Lord, about 15 or 16 Years ago, in the late King's Reign, a Mandate was given to one *Tatnel*, a Nonconformiſt Miniſter, and he refuſed to ſubſcribe and take the Oaths; whereupon the Univerſity petitioned the King, and he was pleaſed to recall his Mandate.

Lord Chancellor. How was it you knew the Minds of the Senate in this Buſineſs?

Vice-Chancellor. My Lord, the Houſe ſent up their Opinions by Dr. *Smoult* and Mr. *Norris*

1686. 3 Jac. II.

Lord Chancellor. But, Mr. Vice-Chancellor, you ought to take an Account of what is done in the Houſe yourſelf, and not from others; And how came this new Way of giving Opinions? Are not the Proctors uſually the Men that bring the Senſe of the Houſe to the Vice-Chancellor?

Vice-Chancellor. Not the Non-Regent, my Lord; they are not admitted into that Houſe, nor have any Thing to do there.

Then the Vice-Chancellor, *&c.* were ordered to withdraw; and being called in again half an Hour afterwards, to hear the Determination of the Commiſſioners, the Lord Chancellor pronounced the following Sentence.

Sentence pronounced againſt the Vice-Chancellor.

That the Vice-Chancellor ſhould be deprived of his Office, and not meddle afterwards with any Publick Buſineſs in the Univerſity: That he ſhould be ſuſpended ab officio & beneficio, *of his Maſterſhip of* Magdalen-*College, during his Majeſty's Pleaſure; and abſtain from the Function of Maſter of the ſaid College, during the ſaid Suſpenſion, on Pain of Deprivation of his Maſterſhip.* And it was further decreed, *That the Profits belonging to the ſaid Maſterſhip, ſhould, during the Suſpenſion, be applied to the Uſe of the College.*

The Univerſity reprimanded.

The Deputies of the Senate appearing again before the Commiſſioners on *Thurſday* the 12th of *May*, and with them Dr. *Peachel* the Vice-Chancellor, the Lord Chancellor ſaid, The laſt Time they appeared there, the Lords Commiſſioners had thought fit to ſet a Mark of their Diſpleaſure on the Vice-Chancellor: And that all the World muſt be ſenſible how obſtinate the Univerſity had ſhewn themſelves in refuſing to obey the King's Commands: But their Lordſhips conſidered there was a Difference between the Vice-Chancellor's Caſe and theirs; and therefore did not conclude them who repreſented the Senate with him. However, their beſt Courſe would be, by a ready Obedience to his Majeſty's Commands for the future, to make amends for the ill Example that had been given; and therefore, in the Words of the Scripture, he bid them *Go their way, and ſin no more, leſt a worſe thing come unto them*, directing them to ſend Copies of the Univerſity Statutes to be laid before the Commiſſioners.

Two Orders of the Commiſſioners were afterwards ſent down to *Cambridge* by Mr. *Atterbury* the Meſſenger; the firſt directed to the Proctors, to proceed to the Choice of a new Vice-Chancellor, and the other to the Fellows of *Magdalen*-College.

To each of which was annexed a Copy of the Sentence, to be fixed upon the School-Doors, and the Gates of *Magdalen*-College: And on the 17th of *May* Dr. *Balderſon*, Maſter of *Emanuel*, was elected Vice-Chancellor.

The Remarks on theſe Proceedings will be ſeen at the End of the Trial of the ſeven Biſhops.

Pre-

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Proceedings againſt St. *Mary Magdalen* College in *Oxford* 1687. 3 *Jac.* II.

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The Caſe of Magdalen *College.*

UPON the Death of Dr. *Henry Clerk*, Preſident of St. *Mary Magdalen* College, *Charles Aldworth*, Doctor of Laws, the Vice-Preſident, gave Notice of it in the Chapel on the 31ſt of *March* 1687. Whereupon the Fellows agreed to proceed to the Election of a Preſident on the 13th of *April* following; and the abſent Fellows were ſummoned to be preſent at it.

In the mean time, *(viz.)* on the 11th of *April*, came the King's Letter Mandatory, requiring the Fellows to elect Mr. *Anthony Farmer* their Preſident: And the Vice-Preſident read the Letter the ſame Day before the Fellows, in the Chapel after Evening Service, requiring them to attend again next Morning, in order to give their Anſwer to it.

All the Fellows meeting accordingly the next Morning, the Vice-Preſident read the Statute, *De electione Preſidentis*, and the Statute of 5 *Eliz.* againſt Corrupt Elections, as alſo the King's Letter: And their Anſwer being demanded, the Fellows ſaid, That they had a Petition lying before his Majeſty, and they ought not to proceed to Election till they had received his Majeſty's Anſwer.

The Vice-Preſident and Fellows meeting again on *Friday April* 15, Dr. *Thomas Smith*, and Capt. *Bagſhaw*, two of the Fellows, acquainted the reſt from the Lord Preſident of the Council, That the King, having ſent his Letter to the College in Anſwer to their Petition, expected to be obeyed.

The Vice-Preſident demanding again, Whether they would elect and admit Mr. *Farmer*, in Obedience to the King's Letter? They anſwered, They deſired to proceed to Election; and Mr. *Farmer* not being a Perſon capable of being choſen by their Statutes, and this the laſt Day limited for the Election, they elected Mr. *John Hough*, Batchelor of Divinity; and he was immediately declared Preſident; and Mr. *Maynard* was appointed by the thirteen ſenior Fellows to preſent him to the Viſitor, in order to his Admiſſion. Mr. *Thomſon* and Mr. *Charnock* only declaring for Mr. *Farmer*; and on *Saturday* the 16th of *April* Mr. *Hough* was preſented to the Viſitor, and ſworn and admitted Preſident by his Lordſhip.

Mr. Hough *elected Preſident.*

The Fellows ſummoned, before the High Commiſſion.

The Vice-Preſident and Fellows were thereupon ſerved with a Citation dated 28 *May*, 1687. requiring them, or ſuch of the ſaid Fellows as they ſhould depute, to appear before his Majeſty's Commiſſioners for Eccleſiaſtical Affairs, in the Council-chamber at *Whitehall*, on the 6th of *June* following.

Demanded why they did not elect Farmer.

Where the Vice-Preſident and Fellows deputed by the ſaid College appearing, and it being demanded, Why they did not obey his Majeſty's Letters, requiring them to elect and admit Mr. *Anthony Farmer* their Preſident, they gave in an Anſwer of the following Tenor, *(viz.)*

Their Anſwer.

That their College was a Body Corporate, governed by Local Statutes, granted and confirmed to them by King *Henry* VI. and other Kings of this Realm. That by thoſe Statutes the Perſon elected Preſident ought to be a Man of good Life and Converſation, and one who had been Fellow of the ſaid College, or of *New College*. To the Obſervation of which Statutes all the Fellows were ſworn, as well as that they would neither procure or conſent to any Diſpenſation of the ſaid Oath.

That inaſmuch as the ſaid Mr. *Farmer* had neither been Fellow. of this College, or of *New College*, and had not thoſe Qualifications their Statutes required; and they could not comply with his Majeſty's Letter without violating their Oaths, and hazarding their legal Intereſt and Property; which they were bound by their Oaths to maintain: They repreſented the ſame in their humble Petition to his Majeſty. And having deferred their Election of a Preſident to the laſt Day limited by their Statutes, they did then elect the Rev. Mr. *John Hough*, B. D. a Fellow of their College, and every Way qualified, to be their Preſident, who had ſince been confirmed by the Biſhop of *Winton* their Viſitor. And that they might not lie under his Majeſty's Diſpleaſure, they did, on the 18th of *April*, make an humble Repreſentation thereof to his Majeſty by his Grace the Duke of *Ormonde*, their Chancellor, ſetting forth the indiſpenſable Obligations they were under to obſerve their Founder's Statutes. And to this Anſwer they added the following Reaſons, why they could not elect Mr. *Farmer*, *viz.*

They ſhew Farmer *was diſqualified.*

That he ſo misbehaved himſelf in *Trinity* College in *Cambridge*, that he received an Admonition from the Maſter of that College, in order to his Expulſion: And having left *Cambridge*, he taught School at *Chippenham* in *Wiltſhire*, under a Non-conformiſt Miniſter, without Licence. That in *September* 1683, the ſaid *Farmer* was entered in St. *Mary Magdalen* Hall in *Oxford*, where ſuch frequent Complaints were brought againſt him for his troubleſome and unquiet Temper, that, to preſerve the Peace of that Society, he was deſired to leave the ſaid Hall. That after he was admitted of *Magdalen* College, he declared that there was no Proteſtant but would cut the King's Throat. But at other Times he declared to the Fellows of the ſame College, that whatever he pretended, he was really a Member of the Church of *England*, and that he made Intereſt with ſome *Roman* Catholicks only to get Preferment by their means; and for that Reaſon was willing to be of their Religion.

That at the very Time his Majeſty's Letter came to the College in his Behalf, he was at *Abington* in very ill Company, where he continued drinking to Exceſs two or three Days and Nights, and among other Diſorders, was one of thoſe who in the Night-time threw the Stocks into the River: And that in general the ſaid *Farmer* was of ill Fame, as appeared by Letters and Certificates the ſaid Fellows were ready to produce, *and which were actually produced.*

The High Commiſſion decree Hough's *Election void.*

The Eccleſiaſtical Commiſſioners, however, proceeded on the 22d of *June* to declare the Election

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Election of Mr. *Hough* void, and decreed, that he ſhould be removed from the Preſidentſhip of the ſaid College: They likewiſe decreed, that Dr. *Aldworth*, the Vice-Preſident, ſhould be ſuſpended from that Office, and that Dr. *Fairfax's* Fellowſhip ſhould be ſuſpended for not obeying his Majeſty's Letters Mandatory for electing *Farmer:* His Majeſty alſo iſſued his Inhibition, forbidding the Fellows to elect any Perſon into a Fellowſhip, or other Place in the College, till his further Pleaſure was known.

The King's Mandate, to elect the Biſhop of Oxford *their Preſident.*

On the 14th of *Auguſt* following, the King ſent down another Mandate, authorizing and requiring the College to admit the Lord Bp. of *Oxford*, their Preſident; and with this Mandate came a Letter from the Lord *Sunderland* to the Fellows, directing them immediately to aſſemble and pay a ready Obedience to his Majeſty's Pleaſure herein, and ſend him an Account of their Proceedings. The Biſhop of *Oxford* alſo ſent them a Letter acquainting them he was indiſpoſed, and therefore deſired they would admit him their Preſident by Proxy.

The Fellows attend the King at Chriſt-Church.

In the beginning of *September* 1687, his Majeſty, going to the *Bath*, and taking *Oxford* in his Way, ſent an Order to the Fellows of *Magdalen* College on the 4th of that Month, to attend him at *Chriſt-Church* that Afternoon; and the Fellows attending accordingly, the following Conference happened between his Majeſty and the Fellows.

King. What's your Name? Are you Dr. *Pudſey?*

Dr. *Pudſey.* Yes, may it pleaſe your Majeſty.

King. Did you receive my Letter?

Dr. *Pudſey.* Yes, Sir, we did.

King. Then you have not dealt with me like Gentlemen: You have done very uncivilly by me, and undutifully----Here they all kneeled, and Dr. *Pudſey* offered a Petition, which his Majeſty refuſed to receive, and ſaid, You have been a ſtubborn turbulent College, I have known you to be ſo theſe Twenty-ſix Years; you have affronted me in this. Is this your Church of *England* Loyalty? One would wounder to find ſo many Church of *England* Men in ſuch a Buſineſs: Go Home, and ſhew your ſelves good Members of the Church of *England:* Get you gone; know I am your King; I will be obeyed, and I command you to be gone. Go, and admit the Biſhop of *Oxford* Head, Principal, I mean Preſident of the College. Let them that refuſe it look to it; they ſhall feel the Weight of their Sovereign's Diſpleaſure. As they were going, the King ſaid, he heard they had admitted a Fellow ſince his Inhibition: To which they anſwered, it was only a Confirmation of a former Election: The King ſaid, That was downright Diſobedience.

The Fellows offered again their Petition on their Knees.

King. Get you gone; I will receive nothing from you, till you have obeyed me, and admitted the Biſhop of *Oxford.* Upon which they went to their Chapel, and Dr. *Pudſey* propoſing, Whether they would obey the King, and elect the Biſhop of *Oxford?* They agreed,

They refuſe to elect the Biſhop of Oxford.

That the electing the Biſhop of *Oxford* being directly contrary to the Statutes and their Oaths, they could not apprehend it in their Power to obey his Majeſty in this Matter.

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A Committee of the High Commiſſion ſit at Oxford.

Octob. 19, Mr. *Atterbury* the King's Meſſenger fixed a Citation on the College and Chapel Doors, requiring the pretended Preſident and Fellows, and other Members of the College to appear before the Lords Commiſſioners, the Lord Biſhop of *Cheſter*, the Lord Chief Juſtice *Wright*, and Mr. Baron *Jenner*, in the Chapel on *Friday* Morning, *Oct.* 21.

On *Thurſday* the Lords Commiſſioners came to *Oxford*, attended with Three Troops of Horſe, which were quartered there.

Their Proceedings.

On *Friday* Morning at Nine, they came into the outward Chapel; but no Seats being prepared there, they adjourned into the Hall, where their Commiſſion was read, which in general was the ſame with the former; only theſe Three, who came down, had been added to the other Lords, and were particularly impowered to viſit *Magdalen* College only. Then the Preſident and Fellows were called over, and all appeared who were in Town, except Dr. *Fairfax*; and Excuſes were made for the abſent.

Then the Biſhop of *Cheſter* made a Speech, wherein he reprimanded them for their Diſloyalty, affirmed that the Church of *England* taught an unlimited and unconditional Obedience; and laboured by Threats and Promiſes to induce them to comply with his Majeſty.

The Fellows deſiring a Copy of their Lordſhip's Commiſſion, it was denied them; after which happened the following Dialogue between the Commiſſioners, and Dr. *Hough* the Preſident.

Biſhop of *Cheſter.* Dr. *Hough*, will you ſubmit to this Viſitation?

Dr. *Hough.* I do declare here, in the Name of my ſelf and the greater Part of the Fellows, That we ſubmit to the Viſitation, as far as it is conſiſtent with the Laws of the Land, and the Statutes of the College.

L. C. J. You cannot imagine that we act contrary to the Laws of the Land; and as to the Statutes, the King has diſpenſed with them.

Dr. *Hough.* My Lords, I find that your Commiſſion gives you Authority to change and alter the Statutes, and make New ones, as you think fit. Now, we have taken an Oath not only to obſerve theſe Statutes, but to admit of no new Ones, or Alterations in theſe. This muſt be my Behaviour here; I muſt admit of no Alteration, and by the Grace of God never will.

Biſhop of *Cheſter.* You have a Statute there for Maſs, why don't you ſay Maſs?

Dr. *Hough.* That Statute is taken away by the Laws of the Land, which oblige us to ſay Common-Prayer.

Biſhop of *Cheſter.* Do you allow that an Act of Parliament can free you from the Obligation of a Statute?

Dr. *Hough.* I do not ſay but that his Majeſty may alter our Statutes, or the Parliament may do it; but I, who have already taken an Oath to obſerve theſe Statutes as they now

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ſtand, and to admit of no Alteration by any Authority whatever, can obey no other: But thoſe, who ſhall come after ſuch Alterations ſhall be made, are not obliged to obſerve them; and that is our Caſe, as to the Statutes for Maſs.

Then the Decree of the 22d of June, *declaring the Preſident's Election to be void, was read.*

Biſhop of *Cheſter*. Why did you not obey this Decree?

Dr. *Hough*. I was never cited before their Lordſhips, or heard in Perſon, or by Proxy: And I am the firſt Inſtance of any Man that was ever deprived of a Freehold (whereof he had been legally inveſted, and was poſſeſſed) without being ſummoned or heard.

Biſhop of *Cheſter*. The King has, for the moſt Part, recommended to the Preſidentſhip of this College.

Dr. *Hough*. I am the twentieth Preſident, and only four of that Number have been recommended by the Crown; whereof Three were qualified for that Office.

The Petition of the College to his Majeſty, before any Election.

Then the Petition of the College to his Majeſty, dated the 9th of *April* was read, wherein they ſet forth, That having heard that his Majeſty was about to recommend Mr. *Farmer* to them, (a Perſon who was incapable of that Office) they did humbly beſeech him, either to leave them to a free Election, or to recommend a qualified Perſon.

Biſhop of *Cheſter*. Why did you not ſtay for his Majeſty's Anſwer?

Dr. *Hough*. We did, till the very laſt Day wherein we are limited to finiſh the Election; and my Lord *Sunderland* returned this Anſwer, in the King's Name, *That his Majeſty expected to be obeyed*. Now, my Lord, We did no longer defer the Election, becauſe our Statutes enjoin us to elect within ſuch a Time; and we could not chuſe the Perſon his Majeſty recommended, becauſe he was unfit: The Society therefore proceeded to the Election of another Perſon.

The Commiſſioners meeting again in the Common Room, on Saturday *the 22d of* October, *and the Fellows attending, they were all ordered to withdraw, except Dr.* Hough.

Biſhop of *Cheſter*. Do you ſubmit to the Decree of the Commiſſioners, whereby the Election is declared Null.

Dr. *Hough*. I cannot ſubmit to that Sentence; becauſe I think I cannot be deprived of my Freehold, but by Courſe of Law in *Weſtminſter-Hall*, or by being ſome way incapacitated by the Founder's Statutes.

Biſhop of *Cheſter*. Will you deliver up the Keys to the Preſident whom his Majeſty hath appointed?

Dr. *Hough*. There neither is, nor can be a Preſident, ſo long as I live and obey the Statutes; and therefore I do not think fit to give up my Right, the Keys of my Lodgings.

Then the Fellows were called in; and the Biſhop demanded again, Whether he would deliver up the Keys, and quit Poſſeſſion of the Lodging? The Doctor refuſing it a ſecond Time, the King's Proctor charged him with Contumacy, and the Biſhop of *Cheſter* gave him the following Admonition.

Biſhop of *Cheſter*. Dr. *Hough*, I admoniſh you to depart peaceably out of the Lodgings, and to act no longer as Preſident, or pretended Preſident of this College. Then they ſtruck his Name out of the Book, and admoniſhed the Fellows, and the reſt of the Society, not to ſubmit to his Authority.

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Dr. Fairfax *was afterwards called in and examined alone.*

Biſhop of *Cheſter*. What was the Cauſe of your Contempt, in not appearing Yeſterday?

Dr. *Fairfax*. I thought my Suſpenſion had eaſed me of that Trouble.

L. C. J. You muſt make your Supplication and Submiſſion to the King.

Dr. *Fairfax*. They tell me this Buſineſs lies in your Lordſhip's Court (the *King's-Bench*) and only there.

Biſhop of *Cheſter*. But will you ſubmit to this Viſitation?

Here Dr. Fairfax *read the following Words out of a Paper he held in his Hand.*

My Lords,

" I Have been ſummoned, and appeared in
" this Cauſe, before the Lords Eccleſiaſti-
" cal at *Whitehall*, with whom your Lord-
" ſhips are now joined in Commiſſion, and
" then gave in my Anſwer: I have nothing
" to add to it, and find no Reaſon to retract it."

Biſhop of *Cheſter*. If your Suſpenſion was taken off, would you ſubmit to the Biſhop of *Oxford*?

Dr. *Fairfax*. Truly, my Lord, I cannot do it.

Then the Fellows were called in again; and it was demanded, Whether they would aſſiſt at the Admiſſion of the Biſhop of *Oxford* when he ſhould be inſtalled Preſident, by Virtue of the King's Mandate: To which they anſwered, They were under Oaths to the contrary; and therefore could not do it, (except Dr. *Pudſey* and Dr. *Smith*, who anſwered dubiouſly, and *Charnock*, who ſaid, He would aſſiſt.)

At another Meeting of the Commiſſioners the ſame Afternoon, a Letter from Dr. *Pudſey* to the Earl of *Sunderland* was read, (dated the 2d of *Auguſt*) importing that the Society, in anſwer to his Majeſty's Letter commanding them to admit the Biſhop of *Oxford*, agreed unanimouſly in this Anſwer, *That the Place was full:* Whereupon the Commiſſioners demanded of the Fellows ſeverally, If this was their Anſwer? And as many of them as were preſent acknowledged it was.

Dr. Hough *proteſts againſt the Proceedings of the Commiſſioners.*

During this Examination, Dr. *Hough* the Preſident came into Court, and proteſted againſt all their Proceedings in Relation to his Deprivation, declaring they were illegal, unjuſt, and null; and appealed to the King in his Courts of Juſtice: At which the young Students and the Strangers giving a loud Hum, their Lordſhips were ſo incenſed, that they bound over Dr. *Hough* in the Sum of 1000 *l.* to appear at the *King's-Bench* Bar on the 12th of *November*.

Then the Fellows were required to ſign the abovementioned Anſwer; which they all did, except *Charnock*: Whereupon the Biſhop of *Cheſter* ſaid, It was an unmannerly Anſwer, or to that Effect.

The Court meeting again on the 25th of *October*, Mr. *Wiggins*, Chaplain to the Biſhop of *Oxford*, produced an Inſtrument, impowering him to be inſtalled Preſident in the Room

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Room of his Lordſhip: Which being read, together with the King's Mandate for the Biſhop of *Oxford*, the Queſtion was put to two or three of the Seniors, Whether they would aſſiſt at this Inſtallment? Which they refuſing, the Court adjourned to the Chapel, where the Biſhop of *Cheſter* put Mr. *Wiggins* into the Preſident's Stall, and he took the Oath which the Statutes enjoin the Preſident at his Admiſſion, and the Oaths of Allegiance and Supremacy; and then their Lordſhips conducted him to the Door of the Preſident's Lodgings, where knocking three Times, and it not being opened, Mr. *Atterbury* and a Tipſtaff were ordered to fetch a Smith, and force it open, which was done, their Lordſhips being preſent: But none were aſſiſting except Mr. *Charnock*.

The Preſident's Lodge broke open and the Biſhop of Oxford's *Proxy put in Poſſeſſion.*

It being demanded of Dr. *Fairfax*, If he would ſubmit to the New Preſident? he ſaid he could not; becauſe he had a legal Preſident already. Then the ſame Queſtion was put to the Society, who in the Afternoon returned this Anſwer, That whereas his Majeſty had been pleaſed by his Royal Authority to cauſe the Right Reverend the Lord Biſhop of *Oxford* to be inſtalled Preſident, They whoſe Names were thereunto ſubſcribed, did ſubmit to it as far as was lawful and agreeable to the Statutes of the College.

It being again demanded of Dr. *Fairfax*, If he would obey the Court and the Biſhop of *Oxford*, and he refuſing both, the Lords Commiſſioners ordered his Name to be ſtruck out of the Buttery Book, and declared his Place to be void; which the Doctor proteſted againſt as illegal and unjuſt.

Then the Commiſſioners adjourned till *Wedneſday* Morning, requiring the Society to bring in their Anſwers to the following Queſtions: 1*ſt*, What Gifts and Proviſions have you for Entertainment of Strangers? 2*dly*, What is the Value of them? 3*dly*, How applied? 4*thly*, Where is the Place of Entertainment?

Wedneſday Octob, 26, 1687.

It was made appear to the Commiſſioners, that the Society was obliged to give in Charity 2 *l*. 3 *s*. 4 *d*. and that they gave, beſides *Communib. Annis* almoſt 100 *l*. Upon which their Lordſhips commended their Liberality, and ſaid that Complaint was groundleſs.

Friday, October 28.

The Fellows were called in, and the Biſhop of *Cheſter* told them, His Majeſty expected ſome further Submiſſion; and that they ſhould own the Proceedings and Legality of the Court, and implore his Majeſty's Pardon: Whereupon they withdrew, and gave in the following Anſwer.

May it pleaſe your Lordſhips,

" WE have endeavoured in all our Actions to expreſs our Duty in all Humility to his Majeſty, and being conſcious " to our ſelves, that in the whole Conduct " of the Buſineſs before your Lordſhips, we " have done nothing but what our Oaths " and Statutes indiſpenſably oblige us to; we " cannot make any Declaration, whereby " we acknowledge we have done any Thing " amiſs, having acted according to the Prin- " ciples of Loyalty and Obedience, ſo far as " we could, without doing Violence to our " Conſciences, or Prejudice to our Rights, " (One of which we conceive the electing a " Preſident to be) from which we are ſworn " upon no Account whatſoever to depart. " We therefore humbly beg your Lordſhips " to repreſent this favourably, with our ut- " moſt Duty to his Majeſty, whom God " grant long and happily to reign."

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Upon their Lordſhips peruſing the Anſwer, they expreſſed their Diſlike; and ſaid, It did not come up to what they had delivered on *Tueſday*.

To which Dr. *Bailey* ſaid, By the Word *Submit*, in their Anſwer on *Tueſday*, they did not intend any future Obedience to the Biſhop of *Oxford*; but meant it in Reverence to the King's Authority, inaſmuch as they did not oppoſe the Biſhop of *Oxford*'s Inſtallment. Upon this a freſh Queſtion was put to the Fellows, Whether they would obey the Biſhop of *Oxford*, as their Preſident, *licitis & honeſtis*? To which all, except one or two, anſwered, They could not obey the Biſhop of *Oxford* as their Preſident: And Mr. *Fulham* in particular being asked the Queſtion, ſaid, That Dr. *Hough*, being duly elected and admitted Preſident, had obtained ſuch a Right, that he could obey no other Perſon as Preſident.

Whereupon Mr. *George Fulham* was ſuſpended from the Profits of his Fellowſhip, during the King's Pleaſure: And the Court adjourned till *Wedneſday*, *November* the 16th, when Mr. *Joyner* and Mr. *Allibone* were entered Fellows in the Room of Dr. *Fairfax* and Mr. *Ludford*, deceaſed; all Oaths being diſpenſed with, beſides that of a Fellow.

Wedneſday, November 16*th*, *at Nine o'Clock in the Morning*.

The Lords Commiſſioners being ſat, ſent for the Buttery-Book; then called for Mr. *Joyner* and Mr. *Allibone*, and entered them actual Fellows: That done, the Fellows being called, and Reaſons given in for thoſe that were abſent, the Biſhop of *Cheſter* made a Speech to this Effect.

GENTLEMEN,

The Biſhop of Chester's *Speech to the Fellows.*

YOUR many Contempts, and wilful Diſobedience, have occaſioned this Viſitation, which will end at laſt in your Ruin. This Society of yours has been long exerciſed in the Methods of Quarrelling; has always been troubled with factious Spirits and teſty Mutineers, ever ſince the Reſtoration of the late King: You have encouraged Quarrels among yourſelves; Quarrels between yourſelves and Preſident; Quarrels, at length, between yourſelves and Viſitor: For I have often heard your late Viſitor complain, that this Society was ever ſtocked with an unquiet and turbulent Generation. By theſe Steps, from quarelling with the Preſident and Viſitor, you have at laſt advanced to the higheſt Pitch of Inſolence, to quarrel with your Prince, and affront his Sacred Majeſty. I endeavoured before, at the Opening our Commiſſion, to make you ſenſible of the Scandal that your Diſobedience will bring upon your Religion; how

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how much you ſtain and diſhonour your liberal and ingenuous Education in this Society.

You cannot but know his Majeſty is your Supreme Ordinary; you cannot but have read in *Bracton*, who was 20 Years Lord Chief Juſtice under King *Henry* III. *Nemo preſumat de factis ejus diſquirere, nedum contra factum ejus venire.* All Diſobedience implies Pride; for no Man can diſobey his Governor, but he who thinks himſelf wiſer. The Reputation and Honour of a Prince at home, and his Reſpect abroad, are chief Standards of a Government; but theſe Pillars, as much as in you lies, you have endeavoured to ſhake; and unleſs his Majeſty's Honour and Right be vindicated by us, he can neither be feared at home, nor obſerved abroad. Your Puniſhment muſt be as publick as your Crime. It cannot be conceived but his Majeſty, in Juſtice, in Honour, in Clemency, and in his Royal Tenderneſs, could have proceeded otherwiſe than he has done. On the 1ſt of *April* it was publiſhed, that Dr. *Clerk* was dead; on the 11th, a Mandamus was directed to you, for chuſing Mr. *Farmer*; on the 9th, you preſented a Petition to the Lord Preſident; wherein you laid yourſelves proſtrate at his Majeſty's Feet, repreſenting to him the Incapacity of Mr. *Farmer*, deſiring the Benefits of his Gracious Declaration for preſerving your Rights and Properties, and beſeeching him to nominate another Perſon, qualified according to your Statutes, in the Election of whom you would ſhew your ready Obedience. So ſaid, and ſo done, Gentlemen, had been very well.

But immediately after the Delivery of the Petition, you, not waiting his Majeſty's Anſwer, proceeded on *April* the 15th, to an Election of Dr. *Hough*: So that by this Act, which was plainly contrary to his Majeſty's Authority, whoſe Mandate did certainly imply an Inhibition, you directly confronted your former Promiſes of ready Obedience, and were reſolved to give the King nothing but good Words. When you had done this, as Men of ill Deſigns are always in Haſte for a Confirmation of it, you immediately went and ſurprized your Viſitor, and by that Means perſuaded him to confirm Dr. *Hough*, that very Day he received an Order from the Lord Preſident to the contrary.

Upon this News the King was much amazed, and required an Account of your Proceedings; therefore the Lords Commiſſioners iſſued out a Citation, and after hearing the Plea, upon mature Conſultation with the Learned of both Laws, judged the pretended Election of Dr. *Hough*, to be void and null, and him to be removed, by an Inſtrument dated the ------, which was affixed on the Gate, After this a Mandate was ſent on the ----- to you, to elect the Biſhop of *Oxford*; upon which Terms his Majeſty was graciouſly pleaſed to diſpenſe with your Diſobedience thitherto; but this being diſobeyed, his Majeſty in Perſon, the 14th of *September*, ſent for you to *Chriſt-Church*, and required you immediately to elect the Biſhop of *Oxford* Preſident. You went ſtraight to the Chapel, a Place one would think ſhould have inſpired more Devotion and Awe of his Sacred Majeſty in you, and there contemptuouſly ſubſcribed and ſigned a Paper, directly thwarting his Majeſty's Command. The Ground of your Diſobedience you pretend, that you could not elect him; whereas you could not but know by a written Mandate that lay by you, that Admiſſion would have ſatisfied his Majeſty's Conſcience; the ſtale Topick of Rebellion was here brought to vindicate your petulant and contumacious Behaviour. You pretended that you were obliged by Oaths, and I am ſorry that at the ſame Time you forgot that of Allegiance: And, indeed, there is not a greater Sign of Hypocriſy, than partial Obedience. Had you any Reſpect to the Father of your Country, and your Mother the Church, you would have ſacrificed your pretended Scruples, as a Peace-Offering to the King. The beſt of us, I am ſure, have Reaſon to beg God and the King's Pardon; but you, as if his Majeſty reigned by Courteſy, would have a King under you, but none over you. You urged the Obſervance of your Statutes, of which, as it hath appeared, you have not been ſo conſtant Obſervers. When your own Humour prompts you to a Diſpenſation, then you can readily embrace it; witneſs but that of being ſerved *per Maſculos*, by which great Scandals have come to this Society, by reaſon of Baſtards.

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But when the King interpoſed, in whoſe Power alone it is to diſpenſe with them, then you preſently act according to ſuch Methods as theſe. None of theſe Pretences will eaſe you with wiſe and ſober Men.

This was the only Oppoſition his Majeſty in his Progreſs received: Wherever his Sacred Majeſty came, he worked a miraculous Converſion, except in *Oxford*; and ſo far ſatisfied every one with the Equity of his Proceedings, that none went away diſcontented from his Preſence, unleſs it was for this Reaſon, that they could not enjoy it any longer.

October the 20th, we came down, and upon opening our Commiſſion, I took Care to repreſent to you the Heinouſneſs of your Offence, and to perſuade you to a ſerious Repentance; but all in vain.

For on *Saturday* Morning, we required you to admit and inſtal the Biſhop of *Oxford*; which all, except Three, refuſed. In the Afternoon Dr. *Hough*, having been deprived, and by us commanded to depart the College, came unto us without any Leave, but not without great Attendance; Circumſtances, I think, much unbefitting a Man pronounced Expelled; and there entered a Proteſtation againſt all that we had done, or hereafter ſhould do, as illegal, unjuſt, and null; which he delivered not in Writing, but by Word of Mouth, a Thing repugnant to the Nature of all Appeals, and, which was worſe, without the uſual *Salvo* to his Majeſty's Supreme Power. When he had ſpoken it, there followed ſuch a tumultuous, ſeditious, and inſolent Hum, which if you yourſelves had not applauded, or at leaſt conſented to, it was impoſſible but that you would have diſcovered ſome of thoſe Mutineers. However, ſince his

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Carriage and Language gave Occaſion to it, it was thought fit that he only ſhould be obnoxious; and accordingly he was bound over.

On *Tueſday* we ourſelves cauſed the Biſhop of *Oxford* to be inſtalled by his Proxy; after which we propoſed to you, Whether, being now inſtalled, you would ſubmit to him *licitis & honeſtis?* To which you gave an Anſwer under your Hands in the Affirmative. You then alſo deſired us to repreſent your Caſe favourably to his Majeſty, giving all Aſſurance of your Loyalty and Obedience: But this Aſſurance of Submiſſion laſted not long; for on *Thurſday*, being required of us to ſubſcribe ſuch a Submiſſion to his Majeſty as we thought agreeable to your Duty, you required Time to conſult of it; and after Deliberation ſigned ſuch a Paper, which ſeemed rather to be a Proteſtation againſt your former Submiſſion, than an Acknowledgment of your Crime: Upon this we might juſtly, then, have proceeded to an Expulſion; but we thought fit, in Compaſſion to you, to take a Journey to *London*, and acquaint his Majeſty with your Diſobedience and ungrateful Behaviour. His Majeſty was extreamly amazed that his Clemency ſhould be deſpiſed; but yet, to your Comforts be it ſpoken, his Patience and Goodneſs extends as far as your Provocations can: But if you ſtill perſiſt in your Obſtinacy, thoſe that are too tall to ſtand, and too ſtubborn to bend, deſerve to be broken. And now I think I have ſaid enough to let you know, that the Fig-Leaves you have ſo artificially ſtitched together, are not ſufficient to cover your Nakedneſs. I wiſh to God you had the ſame Tenderneſs for your Concerns, as his Majeſty's Commiſſioners have for you; but if you ſtill perſiſt to oppoſe the Royal Power of the King, we, who are come to vindicate the Right and Honour of his Majeſty, reſolve to diſcharge our Conſciences and Duties to God and the King, without any Reſpect of Popularity; that is but the Paradiſe of Fools and Scorn of wiſe Men; and therefore, as for us, we have no more Regard to Peoples Diſlike, than what they dream. By Reaſon, therefore, of your late hypocritical Submiſſion, the Commiſſioners have thought fit, upon mature Conſideration, to draw up an Inſtrument which ſhall be read to you, to which if you ſhall immediately ſubſcribe, before you leave the Room, we ſhall leave you to his Majeſty's Pardon; and this we expect from you all, except Dr. *Thomas Smith* and Mr. *Charnoch*, with whoſe Behaviour the King is ſo well ſatisfied, that he expects no more from them.

After which, a Form of Submiſſion was tendered to the Fellows, which all of them refuſed to ſubſcribe, except Dr. *Thomas Smith* and Mr. *Charnock*, and thereupon Sentence of Expulſion was pronounced againſt them by the Court.

In anſwer to which, one of the expelled Fellows, in the Name of the reſt, ſpoke to this Effect.

The Proteſts of the Fellows.

My LORDS,

" We profeſs all Duty to the King, and " Reſpect to your Lordſhips; but muſt beg " leave to declare, That we think ourſelves " injured in your Lordſhips Proceeding, and " therefore proteſt againſt them, and ſhall " take all juſt and legal Ways to be relieved.

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Soon after an Inſtrument was fixed on the College Gates, of the following Tenor.

By his Majeſty's Commiſſioners of Eccleſiaſtical Cauſes, &c. *particularly authorized and impowered to viſit St.* Mary Magdalen *College, in the Univerſity of* Oxon.

The Sentence of Expulſion.

Whereas, in our Viſitation of the ſaid College, it appeareth unto us, that Dr. *Charles Aldworth*, Dr. *Alexander Pudſey*, Dr. *John Smith*, Dr. *Thomas Bailey*, Dr. *Thomas Stafford*, Mr. *Robert Almond*, Mr. *Manwaring Hammond*, Mr. *John Rogers*, Mr. *Richard Strickland*, Mr. *Henry Dobſon*, Mr. *James Bailey*, Mr. *John Davies*, Mr. *Francis Bagſhaw*, Mr. *James Fayrer*, Mr. *Joſeph Harwar*, Mr. *Thomas Bateman*, Mr. *George Hunt*, Mr. *William Cradock*, Mr. *John Gillman*, Mr. *George Fulham*, Mr. *Charles Pennyſton*, Mr. *Robert Hyde*, Mr. *John Yerbury*, Mr. *Robert Holden*, and Mr. *Stephen Wilks*, Fellows of the ſame College, have been ſeverally guilty of Diſobedience to his Majeſty's Commands, and obſtinately contemned his Royal Authority, and do ſtill perſiſt in the ſame: We have thought fit, upon mature Conſideration thereof, to declare, pronounce, and decree, that the ſaid *Charles Aldworth*, &c. and every of them, be deprived and expelled from their reſpective Fellowſhips. Dated the 16th of *November*, 1687.

WHITEHALL, *December* 10.

Diſabled to take or hold any Preferment.

His Majeſty's Commiſſioners for Cauſes Eccleſiaſtical, and for Viſiting all Cathedral and Collegiate Churches and Chappels, *&c.* met this Day, and taking into their Conſideration all that had paſſed in the Buſineſs of St. *Mary Magdalen*-College in *Oxford*, and the contemptuous and diſobedient Behaviour of Dr. *John Hough*, and ſeveral of the Fellows of that College, throughout the whole Proceeding, their Lordſhips declared, decreed, and pronounced, That Dr. *Hough*, Dr. *Charles Aldworth*, Dr. *Henry Fairfax*, Dr. *Alexander Pudſey*, Dr. *John Smith*, Dr. *Thomas Bailey*, Dr. *Thomas Stafford*, Mr. *Robert Almond*, Mr. *Manwaring Hammond*, Mr. *John Rogers*, Mr. *Richard Strickland*, Mr. *Henry Dobſon*, Mr. *James Bailey*, Mr. *John Davies*, Mr. *Francis Bagſhaw*, Mr. *James Fayrer*, Mr. *Joſeph Harwar*, Mr. *Thomas Bateman*, Mr. *George Hunt*, Mr. *William Cradock*, Mr. *John Gillman*, Mr. *George Fulham*, Mr. *Charles Pennyſton*, Mr. *Robert Hyde*, Mr. *Edward Yerbury*, Mr. *Henry Holden*, and Mr. *Stephen Wilks*, ſhould be uncapable of receiving, or being admitted to, any Eccleſiaſtical Dignity, Benefice, or Promotion: And ſuch of them, who are not yet in Holy Orders, were adjudged incapable of receiving or being admitted into the ſame: And all Archbiſhops, Biſhops, and other Eccleſiaſtical Officers and Miniſters, were required to take notice of the ſaid Sentence, and yield Obedience thereto.

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On the 17th of *January*, 1687, being the Day that the Thirty Demies of *Magdalen*-College, were, by Summons from the Biſhop of *Oxford*, their new Preſident, commanded to appear before him, and none appearing, Mr. *Charnock*, the new Vice-Preſident, ſtruck out of the Buttery-Book, the Names of Mr. --------, Mr. *Holt*, Mr. *Adams*, ſen. Mr. *Veſey* and Mr. *Brabourn*, Maſters of Arts; Mr. *Hyde*, Mr. *Woodward*, Mr. *Watkins*, Mr. *Stacey*, Mr. *Sherwin*, and Mr. *Kenton*, Bachelers of Arts; and Mr. *Croſs*, Mr. *Buſh*, and Mr. *Wells*, Under Graduates.

Names of the Fellows and Students ſtruck out.

However, in the memorable Year 1688, when the King received Advice that the Prince of *Orange* was coming over, and that the Affections of his Subjects, were generally alienated from him, by theſe and the like Arbitrary Proceedings, the Biſhop of *Winchester*, the Viſitor of *Magdalen*-College, was ordered to reſtore the excluded Fellows.

The Remarks on theſe Proceedings, will be found at the End of the Trial of the Seven Biſhops.

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The Trial of the Moſt Reverend Father in God Dr. WILLIAM SANCROFT, Lord Archbiſhop of *Canterbury*; and of the Right Reverend Fathers in God Dr. WILLIAM LLOYD, Lord Biſhop of St. *Aſaph*; Dr. FRANCIS TURNER, Lord Biſhop of *Ely*; Dr. JOHN LAKE, Lord Biſhop of *Chicheſter*; Dr. THOMAS KENN, Lord Biſhop of *Bath* and *Wells*; Dr. THOMAS WHITE, Lord Biſhop of *Peterborough*; and Sir JONATHAN TRELAWNEY, Bart. Lord Biſhop of *Briſtol*, for a (pretended) Libel, before the Court of *King's-Bench*, in *Trinity* Term, *June* 15, 1688. 4 *Jac.* II.

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The Trial of the ſeven Biſhops.

A ſhort ſtate of the Caſe.

KING *James* II. publiſhed a Declaration for Liberty of Conſcience, on the 27th of *April*, 1688. (in which was recited a former Declaration:) And an Order of Council was made on the 4th of *May* following, commanding it to be read in the Time of Divine Service in all Churches and Chapels in the Cities of *London* and *Weſtminſter*, and within ten Miles thereof, on the 20th and 27th of *May* (being *Sundays*;) and in all other Churches and Chapels in *England* on the 3d and 10th of *June*, which were likewiſe *Sundays*: And that the Biſhops ſhould cauſe the ſaid Declaration to be ſent to, and diſtributed in their reſpective Dioceſes, and order the ſame to be read by their Clergy.

The Biſhops and Clergy, about Town, aſſembled hereupon at the Archbiſhop's Palace at *Lambeth*, to adviſe what was proper to be done on this Occaſion: And after ſome Debate, the Archbiſhop, by the Advice of his Brethern that were preſent, wrote to all the Biſhops of his Province to come to Town, or ſend their Opinions of the Matter: And it being found that eighteen of the Biſhops, and the main Body of the Clergy, concurred in a Reſolution not to read the Declaration, his Grace the Archbiſhop, with Dr. *Lloyd*, and the other five Biſhops above-mentioned, drew up and ſigned the following Petition.

To the King's Moſt Excellent Majeſty;

The Biſhops Petition.

THE humble Petition of *William* Archbiſhop of *Canterbury*, and of divers of the Suffragan Biſhops of that Province (now preſent with him) in the Behalf of themſelves and others of their abſent Brethren, and of the inferior Clergy of their reſpective Dioceſes, humbly ſheweth.

That the great Averſneſs they find in themſelves to the diſtributing and publiſhing in all their Churches Your Majeſty's late Declaration for Liberty of Conſcience, proceedeth neither from any Want of Duty and Obedience to your Majeſty, our Holy Mother the Church of *England* being both in her Principles, and in her conſtant Practice, unqueſtionably Loyal, and having (to her great Honour) been more than once publickly acknowledged to be ſo by Your Gracious Majeſty; nor yet from any want of due Tenderneſs to Diſſenters, in relation to whom they are willing to come to ſuch a Temper as ſhall be thought fit, when that Matter ſhall be conſidered and ſettled in Parliament and Convocation: But amongſt many other Conſiderations, from this eſpecially, becauſe that Declaration is founded upon ſuch a diſpenſing Power as hath been often declared illegal in Parliament, and particularly in the Years 1662, and 1672, and in the Beginning of your Majeſty's Reign; and is a Matter of ſo great Moment and Conſequence to the whole Nation both in Church and State, that *Your Petitioners cannot in Prudence, Honour, or Conſcience*, ſo far make themſelves Parties to it as the Diſtribution of it all over the Nation, and the ſolemn Publication of it once and again, even in God's Houſe, and in the time of his Divine Service, muſt amount to, in common and reaſonable Conſtruction.

Your Petitioners therefore moſt humbly and earneſtly beſeech Your Majeſty, that you will be graciouſly pleaſed not to inſiſt upon their diſtributing and reading Your Majeſty's ſaid Declaration.

And your Petitioners (as in Duty bound) ſhall ever pray, *&c.*

Their Reception.

On the 18th of *May*, two Days before the Declaration was to be read, the ſix Biſhops (the Archbiſhop being indiſpoſed) attended his

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his Majeſty at *Whitehall* with their Petition; at which he appeared highly incenſed and angrily told them, He had heard of it before, but did not believe it: He did not expect this from the Church of *England*, eſpecially from ſome of them: If he changed his Mind, they ſhould hear from him, If not, he expected his Commands ſhould be obeyed. To which the Biſhops replied, They reſigned themſelves to the Will of God, and then withdrew. The King finding his Declaration neglected, reſolved to proſecute the ſeven Biſhops, whom he looked upon as the Occaſion of it: And they were accordingly ſummoned to appear before the Council on the 8th of *June*, when theſe Prelates attending the Board, it was demanded of them, If they owned the Petition? To which they anſwered, As they ſtood there as Criminals, they hoped his Majeſty would not take Advantage againſt them: But being preſſed to own it by the Lord Chancellor *Jeffries*, the Archbiſhop at length confeſſed that it was written with his own Hand, and that the reſt had ſigned it; and he hoped they had done nothing but what they could juſtify: Whereupon the Lord Chancellor demanded, If they would enter into Recognizances to appear in the Court of *King's-Bench*, to anſwer this Miſdemeanor? The Biſhops anſwered, As they were Peers, they were not obliged to give Security on being charged with a Miſdemeanor in the firſt Inſtance, and looked upon themſelves to be bound in Duty to maintain the Rights of the Peerage, as well as the Rights of the Church. And *Jeffries* threatening to ſend them to the *Tower*, unleſs they withdrew their Petition, and obeyed the King's Declaration, they anſwered, *They were ready to go wherever his Majeſty pleaſed: That they hoped the King of Kings would be their Protector and Judge: They had acted according to Law and their own Conſciences; and no Puniſhment ſhould ever ſhake their Reſolutions.* Whereupon a Warrant was drawn up to commit them to the *Tower* for framing and publiſhing a ſeditious Libel againſt his Majeſty and his Government, as the Petition was called. Which Warrant was ſigned by the Lord Chancellor *Jeffries*, the Earl of *Sunderland*, Preſident of the Council; the Lord *Arundel*, the Marquis of *Powis*, the Earls of *Mulgrave*, *Huntington*, *Peterborough*, *Craven*, *Murray*, *Middleton*, *Melfort* and *Caſtlemain*; the Lords *Dartmouth*, *Godolphin* and *Dover*, Sir *John Ernle*, Sir *Edward Herbert*, and Sir *Nicholas Butler*.

Summoned before the Council.

Committed to the Tower *by theſe Lords*

And as a Tumult was expected on the Commitment of the Biſhops, they were ordered to be carried to the *Tower* by Water: However, the People came in Crowds to the *Thames*-ſide, applauding the Courage of the Biſhops, and wiſhing them a happy Deliverance: And they were no ſooner landed at the *Tower*, but the Officers and Soldiers of that Garriſon fell upon their Knees, and begged the Bleſſing of thoſe Right Reverend Fathers: Whereupon the King commanded ſome other Companies of Soldiers to march into the *Tower*, in whom he had more Confidence.

This ſhort State of the Caſe ſeemed neceſſary to be premiſed, for the better underſtanding of the following Trial.

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On the firſt Day of *Trinity* Term, which fell on *Friday* the 15th of *June* this Year, the Court of *King's-Bench* being ſet, and all the four Judges upon the Bench, *viz.* The Lord Chief Juſtice (Sir *Robert Wright*), Mr. Juſtice *Holloway*, Mr. Juſtice *Powell*, and Mr. Juſtice *Allybone*.

They are brought before the Court of King's-Bench.

Mr. Attorney General, Sir *Thomas Powis*, moved the Court for an *Habeas Corpus*, returnable *immediate*, to bring up my Lords the Biſhops; which being granted, Sir *Edward Hales*, the Lieutenant of the *Tower*, brought my Lord Archbiſhop, and the other ſix Biſhops, into Court about Eleven o'Clock the ſame Day: and the Return being read, it appeared that their Lordſhips were committed to the *Tower* by Virtue of a Warrant under the Hands and Seals of *George* Lord *Jeffries*, Baron of *Wem*, Lord High Chancellor of *England*; *Robert* Earl of *Sunderland*, Lord Preſident of the Council, and the reſt of the Privy Council above-mentioned, *For contriving, making and publiſhing a ſeditious Libel in Writing, againſt his Majeſty and the Government.*

The Return being filed, Mr. Attorney moved, That the Information he had preferred againſt his Grace, and the reſt of my Lords the Biſhops, might be read.

Whereupon Sir *Robert Sawyer*, of Counſel for my Lords the Biſhops, moved that they might be diſcharged before any Thing was read, becauſe they were not legally committed. Mr. Sollicitor, Sir *William Williams* ſaid, in Behalf of the King, That this was an *Habeas Corpus* brought by his Majeſty, and not by the Priſoners; and therefore they muſt ſee firſt what the King had to ſay to them.

Mr. Serjeant *Pemberton*, and Mr. *Finch*, two more of the Biſhop's Counſel, ſtill inſiſted that their Lordſhips ought to be diſcharged before the Information was read, 1. Becauſe the Return ſaid they were committed by ſuch and ſuch Lords of the Council, but not *in Council*; and thoſe Lords had no Power (out of Council) to commit.

2. Becauſe a Peer cannot be commited for a Miſdemeanor, but ought to be ſerved with the uſual Proceſs of a *Subpœna*.

Mr. *Pollexfen*, another of the Biſhops Counſel, alſo urged, that my Lords the Biſhops ought to be diſcharged before the Information was read: But it was ruled by the Court, 1. That every Commitment ſhould be preſumed to be purſuant to the Power of the Perſons committing. And, 2. That the making a Seditious Libel was a Breach of the Peace, for which Security of the Peace might be required of them, notwithſtanding their Privilege of Peerage: And thereupon the Information was ordered to be read.

Ruled, that the Biſhops ought to give Security for their Appearance.

The Information ſet forth, That the King, out of his ſignal Clemency and gracious Intention towards his Subjects, by his Royal Prerogative on the 4th Day of *April*, in the 3d Year of his Reign, did publiſh his Royal Declaration,

The Information.

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Declaration, entitled, *His Majeſty's Gracious Declaration to all his loving Subjects for Liberty of Conſcience.* [Then the Declaration itſelf is inſerted, the Purport whereof was] That it had always been his Majeſty's Opinion, that Conſcience ought not to be conſtrained, or People forced in Matters of meer Religion. That it was contrary to the Intereſt of Government, by ſpoiling Trade, depopulating Countries, and diſcouraging Strangers; and that it never obtained the End: That his Majeſty therefore had thought fit to iſſue forth this Declaration of Indulgence, making no doubt of the Concurrence of the two Houſes of Parliament, when they ſhould meet.

And firſt he declared, That he would protect and maintain the Clergy, and other Members of the Church of *England*, in the free Exerciſe of their Religion as by Law eſtabliſhed, and in the full Enjoyment of all their Poſſeſſions; but that the Execution of all Manner of Penal Laws for Nonconformity in Religion, ſhould be immediately ſuſpended: Provided that ſuch Nonconformiſts meet with their Doors open, and preach nothing that ſhould tend to the Diſturbance of the Government; and ſignify their Place of Meeting to ſome neighbouring Juſtice of Peace. And that his Majeſty might have the Benefit of the Service of all his Subjects, he further declared, That neither the Teſt, or the Oaths of Supremacy or Allegiance, ſhould be required to be taken or ſubſcribed by any Perſon, on their Admiſſion into Offices, for the future; and did grant a free Pardon to all thoſe who had committed any Thing contrary to the ſaid Penal Laws: And he thought fit further to declare, That he would maintain all his Subjects in their Properties and Poſſeſſions, as well of Church and Abby-Lands, as in any other their Lands and Property whatſoever. And the Information further ſets forth, That on the 27th of *April*, in the 4th Year of his Majeſty's Reign, he publiſhed another Declaration, (which is recited in the Information) the Purport whereof was, That ever ſince his Majeſty had granted the aforeſaid Indulgence, he had made it his principal Care to ſee it obſerved without Diſtinction; which his Majeſty was encouraged to do by the Multitudes of Addreſſes he daily received from his Subjects of all Perſuaſions. That in purſuance of this great Work, he had been forced to make many Changes both of Civil and Military Officers, throughout his Dominions; not thinking any ought to be employed in his Service, who would not contribute towards the Peace and Greatneſs of his Country: And he conjured all his Subjects to lay aſide all private Animoſities and groundleſs Jealouſies, and to chuſe ſuch Members of Parliament, as might do their Part, to finiſh what he had begun, being reſolved to call a Parliament, which ſhould meet the following *November* at fartheſt.

And the Information further ſets forth, That on the 4th of *May*. 1688, it was ordered by his Majeſty in Council, That the ſaid laſt mentioned Declaration, bearing Date the 27th of *April* laſt, (in which the firſt is recited) ſhould be read in the uſual Time of Divine Service, on the 20th and the 27th of the ſaid Month of *May*, in all Churches and Chapels within the Cities of *London* and *Weſtminſter* and ten Miles thereof; and upon the 3d and 10th of *June* then next, in all other Churches and Chapels throughout the Kingdom; and that the Right Reverend the Biſhops ſhould cauſe the ſaid Declaration to be ſent and diſtributed throughout their ſeveral Dioceſes, to be read accordingly: And that the ſaid Archbiſhops and Biſhops, the 18th Day of *May*, in the ſaid 4th Year of his Majeſty's Reign, having conſpired and conſulted among themſelves to diminiſh the King's Power and Prerogative, did falſly, unlawfully, maliciouſly, and ſcandalouſly, make, compoſe, and write, a falſe, ſcandalous, malicious, and ſeditious Libel, under Pretence of a Petition, ſtiled, *The humble Petition*, &c. (which was alſo recited in the Information.)

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Which ſaid Libel, the ſaid Archbiſhop and Biſhops, having reſpectively ſubſcribed, did, on the ſaid 18th Day of *May*, in the ſaid 4th Year of the King, cauſe to be publiſhed in the Preſence of our ſaid Lord the King, in manifeſt Contempt of his Majeſty and of the Laws of this Kingdom, to the evil Example of others, and againſt the King's Peace, *&c.* Whereupon the ſaid Attorney General, in behalf of the King, prays Advice of the Court and Proceſs of Law, to be made out againſt the ſaid Archbiſhop and Biſhops, to anſwer the ſaid Lord the King, concerning the Premiſes, *&c.*

Signed { *Thomas Powis*, *William Williams.*

(The Attorney and Sol. Gen.)

The Biſhops move for time to plead.

After the reading the Information, Mr. Attorney moved that my Lords the Biſhops might plead to it immediately; which was oppoſed by the Biſhops Counſel, and Time deſired to put in their Plea till the next *Michaelmas* Term.

but ruled they ſhould plead immediately.

But the King's Counſel inſiſting, That where a Man appeared upon a Recognizance, or was in Cuſtody, or appeared in *propria Perſona*, as a priviledged Perſon, he ought to plead at the firſt Inſtance: And Sir *Samuel Aſtry*, and the reſt of the old Officers of the Court affirming, That this was the conſtant Practice, it was ruled, That my Lords the Biſhops ſhould plead immediately, which Mr. Sollicitor obſerved, was no Hardſhip; for it was agreed on all hands, that in caſe of Life and Death, a Man muſt plead preſently; and *a fortiori*, he held it was ſo in the Caſe of a Miſdemeanor; for if a Perſon was not to be allowed Time when he pleaded for his Life, there was much leſs Reaſon he ſhould have Time to anſwer a Treſpaſs; (though where one appears upon a Summons indeed, according to the Practice of the Court, he has an Imparlance of courſe.)

The Biſhops offer a Plea in Paper.

This Point being ruled againſt the Biſhops, his Grace the Archbiſhop ſtood up, and offering a Paper to the Court, he ſaid,

My

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My LORDS,

" I tender here a ſhort Plea in Behalf of " myſelf and my Brethren the other Defen- " dants; and I humbly deſire the Court will " admit of this Plea.

And the Chief Juſtice ſaying, It ſhould have been in Parliament; his Grace replyed, We will ſtand by it, my Lord; it is ſubſcribed by our Counſel, and we pray it may be admitted by the Court.

Then a Tranſlation of the Plea was read, which was as follows:

" And the aforeſaid *William* Archbiſhop of " *Canterbury*, *William* Biſhop of St. *Aſaph*, " *&c.* being preſent in Court in their own " Perſons, pray *Oyer* of the Information a- " foreſaid; and it is read to them: Which " being read and heard by them the ſaid " Archbiſhop and Biſhops, the ſaid Arch- " biſhop and Biſhops ſay, That they are " Peers of this Kingdom of *England*, and " Lords of Parliament; and each of them is " one of the Peers of this Kingdom of *Eng-* " *land*, and a Lord of the Parliament; and " that they being (as before is manifeſt) " Peers of this Kingdom of *England*, and " Lords of Parliament, ought not to be com- " pelled to anſwer inſtantly for the Miſde- " meanor aforeſaid, mentioned in the ſaid " Information exhibited here againſt them " in this Court; but they ought to be re- " quired to appear by due Proceſs in Law " iſſuing out of this Court here, upon the In- " formation aforeſaid, and upon their Ap- " pearance to have a Copy of the ſaid Infor- " mation exhibited againſt them, and reaſon- " able Time to imparl thereupon, and to ad- " viſe with Counſel learned in the Law con- " cerning their Defence in that Behalf, be- " fore they be compelled to anſwer the ſaid " Information. Whereupon, for that the " ſaid Archbiſhop and Biſhops were impri- " ſoned, and by Writ of our Lord the King " of *Habeas Corpus*, directed to the Lieu- " tenant of the *Tower* of *London*, are now " brought here in Cuſtody without any Pro- " ceſs upon the Information aforeſaid iſſued " againſt them, and without having any " Copy of the ſaid Information, or any Time " given them to imparl or be adviſed: They " pray Judgment, and the Privilege of Peers " of this Kingdom, in this Caſe to be allowed " them; and that they the ſaid Archbiſhop " and Biſhops may not be compelled inſtant- " ly to anſwer the Information aforeſaid, *&c.*

Rob. Sawyer,
Hen. Finch,
Hen. Pollexfen.

Upon reading this Plea, Mr. Attorney ſaid, This was ſuch an unfair Way of Proceeding as would not be endured in an ordinary Caſe: And he hoped ſuch a Plea would not have ſo much Countenance as to be received in Court.

Mr. Serjeant *Pemberton* anſwered, They put in that Plea, and were ready to abide by it: That it was according to the Courſe of the Court, and ought to be received: That it was no ſuch great Diſreſpect to the Court to put the ſame Matter into a Plea, which had been deſired upon a Motion. But the Chief Juſtice replied, The Biſhops Counſel had not dealt ingenuouſly with the Court after four Hours Debate, and the Opinion of the Court delivered, to come and ſum up all the Arguments in ſuch a Plea as this; and ſo put them upon debating the Matter over again: And he thought the Court was not bound to receive this Plea, but might reject it, and oblige the Lords the Biſhops to plead over. And Mr. Juſtice *Holloway* and *Allybone* being of the ſame Opinion, (and only Juſtice *Powel* for receiving the Plea) it was agreed: After which the Biſhops ſeverally pleaded, *Not Guilty*. And the Trial was ordered to be at the Bar of the Court of *King's-Bench* that Day Fortnight. It was alſo ordered, that forty-eight Gentlemen ſhould be returned on the Pannel, and a Jury ſtruck in the Preſence of the Attornies and Sollicitors on both Sides: And the Biſhops in the mean Time were admitted to Bail, his Grace of *Canterbury* entering into a Recognizance of 200 *l.* and the reſt of the Biſhops in 100 *l.* a-piece, to appear in Court that Day Fortnight; and ſo from Day to Day, till they ſhould be diſcharged. And the King's Counſel did not inſiſt on their giving any Security but their own Recognizances.

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The Plea being rejected, the Biſhops plead, Not Guilty.

They are bailed.

The Court ſitting again on *Friday* the 29th of *June*, and the Biſhops appearing, the Jury were called, conſiſting of the following Gentlemen, *viz.*

Sir *Roger Langley*, Bart.	*William Avery*, Eſq;
Sir *William Hill*, Kt.	*Thomas Auſten*, Eſq;
Roger Jennings, Eſq;	*Nicholas Grice*, Eſq;
Thomas Harriot, Eſq;	*Michael Arnold*, Eſq;
Jeof. Nightingale, Eſq;	*Thomas Done*, Eſq; &
William Withers, Eſq;	*Rich. Shoreditch*, Eſq;

The Jury being ſworn, the Information was read (which ſee above.) Then Mr. *Wright* opened the Information, and Mr. Attorney General ſpoke as follows on the Occaſion.

Mr. *Att. Gen.* May it pleaſe your Lordſhip, and you Gentlemen of the Jury, you have heard this Information read by the Clerk, and has been likewiſe opened to you at the Bar; but before we go to our Evidence, perhaps it may not be amiſs for us, that are of Counſel for the King, now in the beginning of this Cauſe, to ſettle the Queſtion right before you, as well to tell you what my Lords the Biſhops are not proſecuted for, as what they are. Firſt, I am to tell you, and I believe you cannot yourſelves but obſerve, that my Lords are not proſecuted as Biſhops, nor much leſs are they proſecuted for any Point or Matter of Religion; but they are proſecuted as Subjects of this Kingdom, and only for a Temporal Crime, as thoſe that have injured and affronted the King to his very Face; for it is ſaid to be done in his own Preſence. In the next Place, they are not proſecuted for any Non-feaſance, or not doing, or omitting to do any Thing, but as they

Mr. Attorney opens the Cauſe.

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they are Actors for cenſuring of his Majeſty and his Government, and for giving their Opinion in Matters wholly relating to Law and Government. And I cannot omit here to take Notice, that there is not any one thing which the Law is more jealous of, or does more carefully provide for the Prevention and Puniſhment of, than all Accuſations and Arraignments of the Government: No Man is allowed to accuſe even the moſt inferior Magiſtrate of any Misbehaviour in his Office, unleſs it be in a legal Courſe, though the Fact is true; no Man may ſay of a Juſtice of Peace to his Face, that he is unjuſt in his Office; no man may come to a Judge either by Word or Petition, and tell him, You have given an unjuſt, or an ill Judgment, and I will not obey it; it is againſt the Rules and Law of the Kingdom, or the like; no Man may ſay of the great Men of the Nation, much leſs of the great Officers of the Kingdom, that they do act unreaſonably, or unjuſtly, or the like; leaſt of all may any Man ſay any ſuch Thing of the King; for theſe Matters tend to poſſeſs the People, that the Government is ill adminiſtered, and the Conſequence of that is, to ſet them upon deſiring a Reformation, and what that tends to, and will end in, we have all had a ſad and too dear bought Experience; the laſt Age will abundantly ſatisfy us whither ſuch a Thing does tend: Men are to take their proper Remedies for Redreſs of any Grievances they lie under; and the Law has provided ſufficiently for that. Theſe Things are ſo very well known to all Men of the Law, and indeed to all the People of *England* of any Underſtanding, that I need not, nor will not, ſtand any longer upon it, but come to the Matter that is now before you Gentlemen to be tried. The Fact that we have laid, we muſt prove, rather to keep to the Formality of a Trial, than to pretend to inform you, or tell you what you do not know. It is publickly notorious to the whole World; but becauſe we muſt go on in the regular Methods of Law, we ſhall prove the Facts in the Order they are laid in the Information. Firſt, we take Notice, that his Majeſty, of his great Clemency and Goodneſs to his People, and out of his Deſire that all his Subjects might live eaſily under him (of which, I think, never Prince gave greater or more plain Evidence of his Intentions that way) the 4th of *April*, 1687. He did iſſue forth his Royal Declaration for Liberty of Conſcience; this Matter, without all Queſtion, was welcome to all his People that ſtood in Need of it; and thoſe that did not, could not but ſay the Thing, in the Nature of it, was very Juſt and Gracious; but preſently it muſt be ſurmiſed, that the King was not in earneſt, and would not, nor could not, make good his Promiſe. But, to take away all Surmiſes, his Majeſty was pleaſed, by his Declaration of the 27th of *April* laſt, not only to repeat his former Declaration, but likewiſe to renew his former Promiſes to his People, and to aſſure them, that he ſtill was, and yet is, of the ſame Opinion, that he had at firſt declared himſelf to be of.

Nay, we further ſhew you, that to the end that this Thing might be known to all his People, even to the meaneſt Men, who, it may be, were not willing, or able, to buy the Declaration; and that the King himſelf might be under higher Obligations, if it were poſſible, than his own Word, he was deſirous it ſhould be repeated in the Churches, and read in that Sacred Place, that all his People might hear what he had promiſed, and given his own Sacred Word for; and he himſelf might be under that ſolemn Tie and Obligation to keep his Word, by remembering, that his Promiſes had, by his own Command, been publiſhed in the Time of Divine Service, in the Houſe of God; and thereupon was the Order of Council made, that has been likewiſe read to you, which does direct, That it ſhould be read in all the Churches and Chapels in the Kingdom; and you have heard, and we ſhall prove, what a Return his Majeſty has had for this Grace and Kindneſs of his: You will find, when we come to read that which they call a Petition, all their Thanks his Majeſty had for his Favour and Goodneſs to his People, it is only hard Words and a heavy Accuſation, ſuch as a private Perſon would not be able to bear; I will not aggravate the Matter, but only ſay thus much, That his Majeſty, who was always a Prince of as great Clemency as ever this Kingdom had, and who was repreſented, for all that, as a Prince of the greateſt Cruelty before his Acceſſion to the Crown by his Enemies, is now accuſed by his Friends for this Effect of his Mercy. My Lord, and Gentlemen of the Jury, his Majeſty reſented this ill Uſage ſo far, that he has ordered and thought fit to have a publick Vindication of his Honour in this Matter, by this Trial; and we ſhall go on to our Proofs, and we do not doubt, but you will do his Majeſty (as you do all other Perſons) Right.

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Then Proof was made of printing the two Declarations for Liberty of Conſcience, by the King's Order; and the Order of Council for reading the laſt Declaration, was proved. *The Evidence.*

The Petition ſigned by the Biſhops alſo was produced in Court; and Sir *John Nicholas* depoſed, That he had it from the King's own Hand.

Mr. Attorney. I ſuppoſe my Lords the Biſhops will not put us to prove it; they will own their Hands.

Lord Chief Juſtice. Yes, Mr. Attorney, their Counſel will put you to prove it. I perceive your beſt way is to ask nothing of them.

Then Sir *Thomas Exton* was ſworn, and depoſed, that he believed the Body of the Petition to be the Archbiſhop's Hand-writing, as alſo the Archbiſhop's Name which was ſubſcribed to it.

Mr. *Brooks* depoſed, That he knew the Archbiſhop's Hand; and he believed the Name ſubſcribed to the Petition, was his Hand, as alſo the Petition itſelf: That he had alſo ſeen the Biſhop of St. *Aſaph*'s Hand-writing, and believed the Name ſubſcribed to the Petition, was his Hand: And he had ſeen a Letter from the Biſhop of *Ely* to the Biſhop of *Oxford*, and believed the Name ſubſcribed, to be the Biſhop of *Ely*'s Hand.

Mr.

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Mr. *Chetwood* depoſed, That he had formerly ſeen a Hand, ſaid to be the Biſhop of *Ely*'s, and he believed the Name ſigned to the Petition was his Hand.

Mr. *Middleton* depoſed, He had ſeen both the Archbiſhop's, and the Biſhop of *Ely*'s Hand-Writing; and believed the Names ſubſcribed to be theirs.

Mr. *Clavel* depoſed, That he knew the Biſhop of *Peterborough*'s Hand, and believed this to the Petition to be his.

Mr. *James* depoſed, That he had ſeen the Biſhop of *Briſtol* write ſeveral Times, and he believed the Hand to the Petition to be his.

Mr. *Powel* depoſed, That the Name ſubſcribed to the Petition, was like the Biſhop of *Chicheſter*'s Hand, *he believed.*

Mr. Sollicitor ſaid, This was not to be endured; there would be an End of all Teſtimony, if the Witneſſes did not anſwer fairly the Queſtions they were asked.

Mr. Attorney ſaid, They had given Evidence ſufficient to have the Petition read, and deſired it might be read.

The Biſhops Counſel object a Similitude of Hands is no Evidence.

Mr. Serjeant *Levinz*, We pray it may not be read till they prove it better, for they have only given Proof by Compariſon of Hands, which in Criminal Matters ought not to be received; and even that Compariſon is proved in ſuch an uncertain Manner, that it can be no Evidence to charge us.

Mr. Serjeant *Pemberton*. My Lord, in every petty Cauſe, where it depends upon Compariſon of Hands, they uſe to bring ſome of the Parties Hand-writing, and compare it in Court with what is endeavoured to be proved, that the Jury may compare them together and judge of the Likeneſs.

Lord Chief Juſtice. I take it, that the Witneſs himſelf is judge of the Compariſon; for if he does know the Parties Hand, and a Paper be offered him to prove it, he is to compare it in his own Mind.

Mr. Serjeant *Pemberton*. It was never admitted to be ſo, that I know of.

Mr. Sollicitor. You may remember ſeveral Caſes, and particularly *Sidney*'s.

Mr. *Pollexfen*. As to *Sidney*'s Caſe, that was in Treaſon; now in Treaſon there is always other Evidence brought, and this comes in but to ſtrengthen the other; but in this Caſe, it is the ſingle Evidence; there is nothing more for ought appears, but whether another believes this to be their Hands: Now, ſhall any one be condemned for what another *believes*, without other Proof?

Mr. Sollicitor. They ſay, proving of Similitude of Hands is no Evidence. When Witneſſes are dead, is it not the common Practice to produce Witneſſes to prove ſuch Men are dead, whoſe Names are ſet as Witneſſes to Deeds; and then ſwear they believe it to be the Hand-writing of thoſe Witneſſes?

Mr. *Finch*. The Evidence they have given of the Biſhops writing this Paper, they have laid to be done in *Middleſex*; and this being local, they muſt prove it to be written in *Middleſex*, where they have laid it, or they fail in their Proof. If they have given Proof of the Hand-writing, there is no Proof where that Hand was written; and therefore they are not yet got ſo far as to have it read againſt my Lords.

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The Chief Juſtice and Mr. Juſtice *Allybone* were of Opinion, that there was Proof enough to have the Petition read; but Mr. Juſtice *Holloway* and Mr. Juſtice *Powel* being of another Opinion, the Chief Juſtice directed the King's Counſel to go on to ſome other Proof. Whereupon Mr. Sollicitor ſaid, They would prove the Confeſſions of the Biſhops; which he hoped would be believed by all Mankind. *The Evidence of the Clerks of the Council, &c.*

Then Mr. *Blathwayte* was ſworn, and depoſed, That on the 18th of this Inſtant *June*, my Lord Archbiſhop acknowledged his Hand to the Petition, (before the Council); and the reſt of the Biſhops, whoſe Hands were ſubſcribed to it, did then alſo reſpectively acknowledge, That it was ſubſcribed by them.

Mr. Serjeant *Pemberton*. What did my Lords the Biſhops ſay at the Time of their appearing in Council concerning the King's Pleaſure, Whether they ſhould anſwer or not?

Mr. *Blathwayte*. The firſt Time my Lords the Biſhops came into the Council, they anſwered, They humbly hoped, as they ſtood there as Criminals, his Majeſty would not take Advantage againſt them; however they would obey his Majeſty's Commands, and thereupon they were commanded to withdraw. The ſecond Time, as near as I can remember, they ſaid the ſame.

Sir *Robert Sawyer*. Were they asked, whether they publiſhed it?

Mr. *Blathwayte*. I think they were, and they denied it.

Mr. Serjeant *Pemberton*. When they came in the ſecond Time, did they deſire to know, If it were his Majeſty's Command they ſhould own it?

Lord Chief Juſtice. That I muſt not permit you to ask, Brother.

Mr. Attorney. I oppoſe the asking this Queſtion, unleſs they tell us what Uſe they would make of it.

Mr. Serjeant *Pemberton*. We ſhall make this Uſe of our Queſtion; if they anſwered under a Promiſe from his Majeſty, that it ſhould not be given in Evidence againſt them, I hope they ſhall not take Advantage of it.

Mr. Sollicitor. That is a very unmannerly Queſtion; this is to put ſomething upon the King, which I dare hardly name; and if they will be ſo preſſing, I deſire for the King that the Queſtion may be ſo entered.

Mr. Serjeant *Pemberton*. Record what you will, I am not afraid of you, Mr. Sollicitor.

Mr. Attorney. Mr. *Blathwayte*, anſwer, Whether there was any Promiſe made to my Lords the Biſhops from the King?

Mr. *Blathwayte*. There was none made; it was the third Time they came in that they owned it. My Lord Chancellor required them to anſwer, Whether they owned that Paper or no? and they, having prayed the King that no Advantage ſhould be taken againſt them for what they ſhould ſay, owned it: And his Grace the Archbiſhop ſaid, as to publiſhing it, That it was written with his

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his own Hand, and that he had not made uſe of his Clerk.

Mr. Attorney. Did the King make any Promiſe or Declaration, that no Advantage ſhould be taken, or Uſe made of it?

Mr. *Blathwayte.* The King did not.

Then Mr. Sollicitor deſired the Petition might be read; but the Biſhop's Counſel anſwered, That the Writing and Contriving muſt be proved to be in *Middleſex*, for all was local, and the Party was to be acquitted, if it was not proved to be done in the County where it was laid.

The Chief Juſtice ſaid, It was too ſoon to make theſe Objections, and that the Paper ought to be read.

The Biſhops Counſel anſwered, If the Objection was ſaved to them, they ſhould not oppoſe the Reading of it.

Then the Petition was read, and the Jury viewed it themſelves.

Mr. Attorney. We ſhall leave our Evidence here, and hear what they can object to it.

Lord Chief Juſtice. What ſay you for the Defendants?

The Biſhops Counſel proceed in their Defence.

Mr. *Finch.* My Lord, in ſhort, we ſay, that hitherto they have totally failed, for they have not proved any Fact done by us in *Middleſex*; nor have they proved any Publication at all.

Lord Chief Juſtice. You hear that Mr. *Blathwayte* ſays, They owned it in *Middleſex*.

Mr. *Finch.* That is not a Publication ſure, or any Evidence where it was done.

Mr. Serjeant *Levinz.* My Lord, in the firſt Place, we inſiſt upon it, there is no Proof of the Fact being done in the County of *Middleſex*; and, in the next Place, this Information and Petition do not agree; for they ſet forth in their Information, *That my Lords the Biſhops, under Pretence of a Petition, did make a Libel*, and have ſet forth no Petition at all; the Petitionary Part is omitted.

Sir *Robert Sawyer.* The Truth of it is, this Information has made a very deformed Thing of it; has left it neither Head or Tail: They ſtile it a Petition, but it is without any Direction to any body, and without any Prayer, for any Thing appears: There may be more in the Paper, than in the Information: If all were in, one Part might explain another.

Mr. Sollicitor. I wonder to hear that Objection from Sir *Robert Sawyer*, who has exhibited ſo many Informations for Libels in Pieces taken out of Books.

Mr. Attorney. Is there any Thing more frequent than only to recite the material Part, without ſetting forth the whole Book. They tell us we have ſet forth a Petition; we ſay no ſuch Thing: We ſay in the Information, you compoſed a certain Libel, *pretenſu petitionis*; in which are contained ſuch and ſuch Things.

Mr. Sollicitor. Take the Information as we have laid it, and I believe there are twenty Precedents of late Days; ſo was the Information againſt *Baxter*, ſo was the Information againſt *Johnſon*, againſt Dr. *Eades*, and againſt Sir *Samuel Barnardiſton*: They are all in this Form, *ſic continetur*; but they ſay, we do not ſet out the Petition. We ſay, it is a Libel; and it is not the Name we rely on, but there is ſuch a Libel, ſo we in our Information call it: If it be not a Libel, then are they very innocent; but if it be as we ſay, then it is not the Speaking ill Things in the Body of a Petition, and then giving it a good Title, and concluding it with a good Prayer, will ſweeten this Crime, nor alter or alleviate it at all: We ſay a Libel is made *pretenſu petitionis*, call it what you will; and that theſe Things are a Libel upon the King and Government.

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As to the other Objection that is made, That here is no Evidence of a Publication; my Lord, I take it to be a Publication in itſelf: Is it poſſible for a Man to write a Libel, to ſet his Name, and part with it, and it ſhall come to the King's Hands, and this not to be deemed a Publication?

Attorney General. They bid us make out where this Libel was written or compoſed: Put the Caſe, a Man is found in *Middleſex* with a Treaſonable Paper in his Pocket, and the Man is indicted here in *Middleſex*, for framing and compoſing ſuch a Treaſonable Libel, ſhall he be admitted to ſay, Pray prove where I made and compoſed it? For though you found it in my Pocket, yet I might do it in the County of *York*. This had been a very good Defence for Mr. *Sidney*, who was indicted, convicted, and attainted, for a Treaſonable Paper, found in his Study, if this Doctrine were true; but then the King would be in a very woful Caſe. Here is a Paper that is found in the County of *Middleſex*, and this is there owned by you to be written and ſubſcribed by you. Pray do you prove that it was written elſewhere?

Serjeant *Pemberton.* We will do it, for once: We will prove that my Lord Archbiſhop was not out of *Lambeth*-Houſe in two Months before the Petition was delivered.

Then Mr. Nicholls *was ſworn.*

He depoſed, That his Grace of *Canterbury* did not ſtir out of *Lambeth* from *Michaelmas* laſt, till the Time he was before the Council.

Mr. *Finch.* This is *ex abundanti*; for in Point of Law, it is incumbent upon them to prove where it was done: And as to the 2d Part, the Publication, there is not a Tittle of Proof offered, but only their owning their Hands upon their Examination at the Council; and no Man did ever yet think, that the anſwering a Queſtion and owning a Paper at the Council-Table, upon a Queſtion put by the King himſelf, was a Publication of a Libel.

Sollicitor General. If the Paper be Libellous, wherever it is found, that is a Publication. Theſe Gentlemen fancy, that unleſs there was a publick Delivery of this Paper abroad, nothing can be a Publication: But I rely upon it, their ſetting their Names to it made it their Paper, and wherever it went, that was a Publication of it: There is the Caſe of *Williams*, made uſe of by Mr. *Finch* in *Sidney's*

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ney's Trial, who wrote a Treaſonable Letter, ſealed it up, and ſent it to the King: And there is Sir *Baptiſt Hicks*'s Caſe, and my Lady *Hatton*'s; there was only a Letter ſealed up and delivered to the Party.

Mr. Recorder. Suppoſe a Man write a ſcandalous Letter from *London*, to a Judge at *Exeter*, and ſends it by the Poſt, and the Letter is received from the Poſt at *Exeter*, and there opened; would any Man make a Queſtion, Whether the Gentleman that ſent the Letter, may not be indicted and proſecuted for a Libel at *Exeter*, where the Libel was received?

Juſtice *Powel.* There is no Queſtion of that; but that comes not Home to our Caſe.

Sol Gen. The Publication, we ſay, was here in *Middleſex*; and of that there is a clear Evidence, becauſe it was found there, and came from the King's Hand, to whom it was directed; and it could not come to the King's Hand out of their Cuſtody, without their Conſent.

Serjeant *Levinz.* My Lord, the Caſes that have been cited are all Law, but not one Tittle to this Purpoſe. In Sir *Baptiſt Hicks*'s Caſe, and *William*'s Caſe, it was proved, they all ſent them to the Places whither they were directed; but is there a Tittle of Proof that the Biſhops ſent it here? And for *Sidney*'s Caſe, there was Treaſon in the very Libel and Book that he made; and he was not indicted for Publiſhing, but for Treaſon in the Place where it was found, becauſe it was found in his Poſſeſſion: But was this ever in my Lord Archbiſhop's Poſſeſſion in *Middleſex*, or the reſt of the Biſhops, and were they publiſhing of it? If it had, then it had been their Act clearly: But that is the Thing wherein they are defective, that they do not prove that my Lords the Biſhops ſent or brought it here; but upon the Queſtion asked them by the King, they acknowledged it to be their Hands: So that there is no Proof of a Fact done here, but an Acknowledgment of a Fact done, nobody knows where.

Mr. *Pollexfen.* It cannot be a Crime to anſwer a Queſtion put by Authority; for it is the Duty of all Men to anſwer, when examined by a lawful Authority. If a Man comes before a Magiſtrate, and confeſſes any Thing, that indeed is Evidence but it is not a Crime; for there is a great deal of Difference between Evidence and the Crime; but that this ſhould be both an Evidence and a Crime too, is a very ſtrange Conſtruction; and for the other Part the writing it (I ſuppoſe) the Court is ſatisfied it was in another County.

Sir *George Treby.* The Evidence they have offered to prove the Publiſhing it, is a Confeſſion; this Confeſſion is teſtified by Mr. *Blathwayte*, who ſays, The Biſhops were asked at the Council, Whether they did ſubſcribe and publiſh this Paper? and that their Anſwer was, That they did *ſubſcribe*, but not *publiſh* it. Now a Confeſſion muſt be taken together, and muſt be admitted to be entirely true by them that produce it: They ſhall never be allowed to take out and uſe one Piece, and wave the reſt: So that the King's Counſel have plainly proved that the Biſhops did not publiſh this Paper; and yet this is the only Evidence upon which they would infer that they did publiſh it.

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L. C. J. It lies upon the King's Counſel to prove that my Lords the Biſhops did cauſe it to be publiſhed; for their owning their Hands does not amount to a Publication.

Then the Clerks of the Council were called in again; namely, Mr. *Blathwayte*, Mr. *Bridgman*, Sir *John Nicholas*, and Mr. *Pepys*; and it was demanded of them, Whether the Queſtion put to the Biſhops at the Council Board was, *Whether this was the Paper they delivered to the King?* Or, *Whether thoſe were their Hands that were to it?*

They all anſwered, That they owned their Hands; but they could none of them remember, that the Biſhops ſaid, That was the Paper they delivered to the King: *At which there was a great Shout.* Mr. Solicitor ſaid, *Here's wonderful great Rejoicing that Truth cannot prevail.*

The Chief Juſtice beginning to direct the Jury, Mr. *Finch* interrupted his Lordſhip, and demanded, Whether this was Evidence or not? For if it was admitted to be Evidence, they had other Matter to offer in Anſwer to that Evidence, and in their own Defence.

The Chief Juſtice anſwered; If they had more to offer, Why did they conclude, and let him begin to direct the Jury? But ſince they ſaid, they had other Matter to offer, the Court would hear it.

Here Serjeant Levinz, *perceiving that the King's Counſel had ſent away for other Evidence, deſired his Lordſhip would go on with his Directions.*

But Mr. Sollicitor ſaid, he was glad the Biſhop's Counſel had given this Interruption; becauſe they ſhould now be able to clear this Point. There was a Fatality, he obſerved, in ſome Cauſes, and particularly in this: They muſt beg the Patience of the Court a little while; for they had Notice a Perſon of very great Quality was coming, that would make it appear, the Biſhops made their Addreſſes to him, that they might deliver the Petition to the King.

The Court ſtay for a Witneſs.

There being a conſiderable Pauſe, which the Biſhop's Counſel were uneaſy at, Oath was made, that Mr. *Graham* went for my Lord *Sunderland*, and he was coming.

Lord Sunderland's *Evidence.*

The Lord *Sunderland* appearing ſome Time afterwards, was ſworn, and depoſed, that before the Biſhops appeared in Council, the Biſhop of St *Aſaph* and *Chicheſter* came to his Office (the Secretary's,) and told him, they came in the Name of the Archbiſhop, and four more of their Brethren, *viz.* the Biſhops of *Ely*, *Bath* and *Wells*, *Briſtol*, and *Peterborough*, with a Petition to deliver the King, if he would give them Leave; and deſired to know of him, which was the beſt Way to do it; and he anſwered he would know the King's Pleaſure, and bring them Word. That they offered him their Petition to read; but he would not read it, and went immediately to his Majeſty, and acquainted him with it: That the King commanded him to let them know, they might come when they would;

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which he acquainted them with, and they went for their Brethern, and attended his Majeſty with their Petition in about an Hours time; but he was not in the Room when it was delivered to the King.

L. C. J. Truly there was a great Preſumption before, but there is a greater now; and I think I ſhall leave it with ſome Effect to the Jury. I cannot ſee but here is enough to put the Proof upon you: I think this is ſufficient Evidence of the Publication.

Mr. *Pollexfen.* The Archbiſhop was not there; and ſo there is no Evidence againſt him: And for the other ſix Lords, my Lord Preſident *(Sunderland)* does not ſay, That this is the Petition that they ſaid they had to deliver to the King; nor did he ſee them deliver it.

Mr. *Attorney.* Then we leave it fairly to the Jury on this Fact.

Mr. *Pollexfen.* If ſo, then we deſire to be heard in our Defence.

Sir *Robert Sawyer.* May it pleaſe your Lordſhip, and you Gentlemen of the Jury, you have heard this Charge which Mr. *Attorney* has been pleaſed to make againſt my Lords the Biſhops, and that is this: That they did conſpire to diminiſh the Royal Authority, and Regal Prerogative, Power, and Government of the King, and to avoid the Order of Council; and in Proſecution of this, they did falſely, maliciouſly, and ſeditiouſly, make a Libel againſt the King, under Pretence of a Petition, and did publiſh the ſame in the King's Preſence.

This, Gentlemen, is a very heinous and heavy Charge; but you ſee how ſhort their Evidence is: The Evidence they bring forth is only, that my Lords the Biſhops preſented the Paper to the King in the moſt private and humble manner they could; that which they have been ſo many Hours a proving, and which they cry up to be as ſtrong an Evidence as ever was given, proves it to be the fartheſt from Sedition in the doing of it, that can be; and you ſee what it is, it is a Petition to be relieved againſt an Order of Council, which they conceive they were aggrieved by: They indeed do not deal fairly with the Court, nor with us, in that they do not ſet it forth that it was a Petition.

L. C. J. That was over-ruled before,

Sir *Rob. Sawyer,* I do not inſiſt upon it now, ſo much as an Exception to the Information, as I do to the Evidence: They ſet this forth to be a ſcandalous Matter; but it only contains their Reaſons, whereby they would ſatisfy his Majeſty, why they cannot comply in a Concurrence with his Majeſty's Pleaſure; and therefore they humbly beſeech the King, and beg and requeſt him (as the Words of it are) that his Majeſty would be pleaſed not to inſiſt upon their diſtributing and reading of this Declaration; ſo the Petitioners on behalf of themſelves, and the whole Clergy of *England,* beg of the King that he would pleaſe not to inſiſt upon it.

Gentlemen, you may obſerve it, that there is nothing in this Petition that contains any Thing of Sedition in it, and it would be ſtrange this Petition ſhould be *Felo de ſe,* and by one Part of it deſtroy the other. It was laid indeed in the Information, that it was with Intent and Purpoſe to diminiſh the King's Royal Authority; but I appeal to your Lordſhip, the Court, and the Jury, whether there be any one Word in it that any way touches the King's Prerogative, or any Tittle of Evidence that has been given to make good the Charge: It is an Excuſe barely for their Non-compliance with the King's Order, and a begging of the King, with all Humility and Submiſſion, That he would be pleaſed not to inſiſt upon the reading of his Majeſty's Declaration upon theſe Grounds; becauſe the Diſpenſing Power, upon which it was founded had been ſeveral Times in Parliament declared to be againſt Law; and becauſe it was a Caſe of that Conſequence, that *they could not in Prudence, Honour, or Conſcience, concur in it.*

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My Lord, Mr. *Attorney* has been pleaſed to charge in this Information, that this is a falſe, malicious, and ſeditious Libel; both the Falſity of it, and that it was malicious and ſeditious, are all Matters of Fact, which, with Submiſſion, they have offered to the Jury no Proof of: And I make no Queſtion but eaſily to demonſtrate the quite contrary.

For, my Lord, I think it can be no Queſtion, but that any Subject that is commanded by the King to do a thing which he conceives to be againſt Law, and againſt his Conſcience, may humbly apply himſelf to the King, and tell him the Reaſon why he does not that Thing he is commanded to do; why he cannot concur with his Majeſty in ſuch a Command.

My Lord, that which Mr. *Attorney* did inſiſt upon in the beginning of this Day (and he pretended to cite ſome Caſes for it) was, that in this Caſe, my Lords the Biſhops were not ſued as Biſhops, nor proſecuted for their Religion. Truly, my Lord, I do not know what they are ſued for elſe: The Information is againſt them as Biſhops; it is for an Act they did as Biſhops, and no otherwiſe, and for an Act they did, and do conceive they lawfully might do, with relation to their Eccleſiaſtical Polity, and the Government of their People as Biſhops.

The next thing Mr. *Attorney* offered was, That it was not for a Non-feaſance, but for a Feaſance. It is true, my Lord, it is for a Feaſance, in making of the Petition, but it was to excuſe a Non-feaſance, the not reading according to the Order; and this, ſure, was lawful for all the Biſhops, as Subjects, to do: And I ſhall ſhew it was certainly the Duty of my Lords the Biſhops, or any Peer of this Realm, to do the ſame in a like Caſe. It was likewiſe ſaid, They were proſecuted here for affronting the Government, and intermeddling with Matters of State: But I beg your Lordſhip and the Jury to conſider, whether there is one Tittle of this mentioned in the Petition, or any Evidence given of it: The Petition does not meddle with any thing of any Matter of State, but refers to an Eccleſiaſtical Matter, to be executed by the Clergy, and to a Matter that has Relation to Eccleſiaſtical Cauſes: So that they were not Buſy-Bodies, or ſuch as meddled in Matters that did not re-

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late to them, but that which was properly within their Sphere and Juriſdiction.

But after all, there is no Evidence, nor any Sort of Evidence that is given by Mr. *Attorney*, that will maintain the leaſt Tittle of this Charge; and how he comes to leave it upon this Sort of Evidence, I cannot tell: All that it amounts to is, That my Lords the Biſhops being grieved in this Manner, made this Petition to the King in the moſt private and reſpectful Manner: And for him to load it with ſuch horrid black Epithets that it was done libellouſly, maliciouſly, and ſcandalouſly, and to oppoſe the King and Government, 'tis very hard; 'tis a Caſe of a very extraordinary Nature; and I believe my Lords the Biſhops cannot but conceive a great deal of Trouble, that they ſhould lie under ſo heavy a Charge, and that Mr. *Attorney* ſhould draw ſo ſevere an Information againſt them, when he has ſo little Proof to make it out.

My Lord, by what we have to ſay to it, we hope we ſhall give your Lordſhip and the Jury Satisfaction, that we have done but our Duties, ſuppoſing here has been a ſufficient Evidence of the Fact given, which we leave to your Lordſhip and the Jury.

My Lord, we ſay in ſhort, that this Petition is no more than what any Man, if he be commanded to do any Thing, might humbly do, and not be guilty of any Crime. And my Lord, as to the Matter of our Defence, it will conſiſt of theſe Heads:

Firſt, We ſhall conſider the Matter of this Petition.

Secondly, The Manner of the delivering it, according as they have given Evidence here.

And, *Thirdly*, The Perſons that have delivered this Petition. And we hope to make it appear beyond all Queſtion, that the Matter contained in this Petition is neither falſe, nor contrary to Law, but agreeable to all the Laws of the Land in all Times. We ſhall likewiſe ſhew you, (though that appear ſufficiently to you already), that the Manner of delivering it was ſo far from being ſeditious, that it was in the moſt ſecret and private Manner, and with the greateſt Humility and Duty imaginable: And then, as to the Perſons, we ſhall ſhew you that they are not ſuch as Mr. *Attorney* ſays, who meddle with Matters of State that are out of their Sphere, but they are Perſons concerned, and concerned in Intereſt in the Caſe, to make this humble Application to the King. And when we have proved all this Matter, you will ſee how ſtrangely we are blackned with Titles and Epithets which we no Ways deſerve, and of which, God be thanked, there is no Proof.

For, my Lord, for the Matter of the Petition we ſhall conſider two Things,

The firſt is, The Prayer, which is this: They humbly beg and deſire of the King, on Behalf of themſelves and the reſt of the Clergy, That he would not inſiſt upon the reading and publiſhing of this Declaration.

Surely, my Lord, there is nothing of Falſity in this, nor any Thing that is contrary to Law, or unlawful for any Man that is preſſed to any Thing, eſpecially by an Order of Council: And this is nothing but a Petition againſt an Order of Council; and if there be an Order that commands my Lords the Biſhops to do any Thing that ſeems grievous to them, ſurely they may beg of the King that he would not inſiſt upon it.

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And for this Matter, they were ſo well ſatisfied about it, and ſo far from thinking that it was any Part of a Libel, that they left it out of the Information; and ſo have made a deformed and abſurd Story of it, without Head or Tail, a Petition directed to no body, and for nothing, it being without Title or Prayer; ſo that this is plain, it was lawful to petition.

Then, my Lord, the next Thing is, the Reaſons which my Lords the Biſhops come to acquaint the King with, Why in Honour and Conſcience they cannot comply with, and give Obedience to this Order: And the Reaſons, my Lord, are two.

The firſt Reaſon that is aſſigned, is, the ſeveral Declarations that have been in Parliament (ſeveral of which are mentioned), that ſuch a Power to diſpenſe with the Law, is againſt Law; and that it could not be done but by an Act of Parliament; for that is the Meaning of the Word *Illegal*, that has no other Signification but unlawful; the ſame Word in Point of Signification with the Word *Illicite*, which they have uſed in their Information, a Thing that cannot be done by Law; and this they are pleaſed to tell the King, not as declaring their own Judgments, but what has been declared in Parliament; though if they had done the former, they being Peers of the Realm, and Biſhops of the Church, are bound to underſtand the Laws, eſpecially when (as I ſhall come to ſhew you), they are made Guardians of theſe Laws; and if any Thing go amiſs, and contrary to theſe Laws, they ought to inform the King of it.

My Lord, the next Thing is, becauſe it is a Thing of ſo great Moment, and the Conſequences that will ariſe from their publiſhing of this Declaration; and that too, my Lord, (for the latter I ſhall begin firſt with) there can be no Queſtion about, or any Pretence that this is libellous or falſe; for certainly it is a Caſe of the greateſt Conſequence to the whole Nation that ever was, therefore it cannot be falſe or libellous to ſay ſo.

My Lord, I would not mention this, for I am loth to touch upon Things of this Nature, had not the Information itſelf made it the *Giſt* of the Charge; for the Information (if there be any Thing in it) ſays, That it was to diminiſh the King's Prerogative and Regal Power in publiſhing that Declaration.

Now, my Lord, what the Conſequence of this would be, and what my Lords the Biſhops meant by ſaying, It was a Cauſe of great Moment, will appear, by conſidering that which is the main Clauſe in the Declaration, at which my Lords the Biſhops ſcrupled, which is the main Stumbling-block to my Lords, and has been to many honeſt Men beſides, and that is this:

We do likewiſe declare, It is our Royal Will and Pleaſure, That from henceforth the Execution of all and all Manner of Penal Laws in Matters Eccleſiaſtical, for not coming to Church, or

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or not receiving the Sacrament, or for any other Non-conformity to the Religion eſtabliſhed; or for or by Reaſon of the Exerciſe of Religion in any Manner whatſoever, be immediately ſuſpended, and the further Execution of the ſaid Penal Laws, and every of them, is hereby ſuſpended.

Now, my Lord, this Clauſe is of ſome legal Effect and Signification, or it is not. If Mr. *Attorney*, or the King's Counſel, do ſay it is of no Effect in Law, then there is no Harm done: Then this Petition does no Ways impeach the King's Prerogative, in ſaying it has been declared in Parliament, according as the King's Counſel do agree the Law to be.

But, my Lord, if it have any Effect in Law, and theſe Laws are ſuſpended by Virtue of this Clauſe in the Declaration, then certainly, my Lord, it is of the moſt diſmal Conſequence that can be thought of; and it behoved my Lords, who are the Fathers of the Church, humbly to repreſent it to the King.

For, my Lord, by this Declaration, and particularly by that Clauſe in it, not only the Laws of our Reformation, but all the Laws for the Preſervation of the Chriſtian Religion in general are ſuſpended, and become of no Force: If there be ſuch an Effect in Law wrought by this Declaration as is pretended, (that is) that the Obligation of Obedience to them ceaſeth; the Reaſon of it is plain, the Words cannot admit of ſuch a Quibble as to pretend that the Execution of the Law is not the ſuſpending of the Law; and that the ſuſpending the Execution of the Law is not a ſuſpending of the Law; for we all know the Execution of every Law, in its primary Intent, is Obedience to it; that of the Penalty comes in by Way of Puniſhment and Recompence for their Diſobedience.

Now, my Lord, if this Declaration does diſcharge the King's Subjects from their Obedience to, and the Obligation from, thoſe Laws; then pray, my Lord, where are we? Then all the Laws of the Reformation are ſuſpended, and the Laws of Chriſtianity itſelf, by thoſe latter Words [*or for or by Reaſon of Religion, in any Manner whatſoever*]; ſo that is not confined to the Chriſtian Religion, but all other Religions are permitted under this Clauſe: And thus all our Laws for keeping the Sabbath, and which diſtinguiſh us from Heathens, will be ſuſpended too.

My Lord, this is ſuch an Inconvenience as (I think) I need name no more; and it is a very natural Conſequence from that Clauſe of the Declaration; it diſcharges at once all Miniſters and Clergymen from performing their Duty in reading the Service of the Church; it diſcharges their Hearers from attending upon that Service.

When a Law is ſuſpended, the Obligation thereof is taken away; and thoſe that before thought themſelves bound to obey, now conclude they are not ſo obliged; and what a Miſchief that will be to the Church, which is under the Care of my Lords the Biſhops, your Lordſhip will eaſily apprehend.

Theſe Things, my Lord, I only mention to ſhew the great and evil Conſequences that apparently follow upon ſuch a Declaration: which made my Lords the Biſhops decline obeying the Order, and put them under a Neceſſity of applying thus to the King, to acquaint him with the Reaſons why they could not comply with his Commands, to read this Declaration to the People, becauſe the Conſequences of it were ſo great, it tending naturally to lead the People into ſo great an Error, as to believe thoſe Laws were not in Force, when in Truth and Reality they are ſtill in Force, and continue to oblige them.

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And that being the ſecond Reaſon in this Petition, I come next to conſider it, to wit, that the Parliament had often declared this pretended Power to be illegal; and for that, we ſhall read the ſeveral Records in Parliament, mentioned in theirPetition, and produce ſeveral ancient Records of former Parliaments that prove this Point, and particularly in the Time of *Richard* II. concerning the Statute of Proviſors, where there were particular Diſpenſations for that Statute; the King was enabled to do it by Act of Parliament, and could not do it without.

L. C. J. Pray, Sir *Robert Sawyer*, go to your Proofs, and reſerve your Arguments till afterwards.

Sir *Rob. Sawyer*. My Lord, I do but ſhortly mention theſe Things; ſo that, my Lord, as to the Matter of this Petition, we ſhall ſhew you, that it is true, and agreeable to the Laws of the Land.

Then, my Lord, as to the Manner of delivering it, I need ſay no more, but that it is plain from their Evidence, that it was in the moſt private and humble Manner: And, as my Lord Preſident ſaid, Leave was asked of the King for them to be admitted to preſent it: Leave was given, and accordingly they did it.

We come then, my Lord, to the third Thing, the Perſons, theſe Noble Lord; and we ſhall ſhew they are not Buſy-bodies, but in this Matter have done their Duty, and meddled with their own Affairs: That, my Lord, will appear,

Firſt, by the general Care that is repoſed in them by the Law of the Land: They are frequently, in our Books, called *The King's Spiritual Judges*; they are intruſted with the Care of Souls, and the Superintendency over all the Clergy is their principal Care.

But beſides this, my Lord, there is another ſpecial Care put upon them, by the expreſs Words of an Act of Parliament; for, over and above the general Care of the Church, by Virtue of their Offices as Biſhops, the Act of 1 *Eliz. cap.* 2. makes them ſpecial Guardians of the Law of Uniformity, and of that other Law in his late Majeſty's Reign, where all the Clauſes of the Statute of 1 *Eliz.* are revived, and made applicable to the preſent State of the Church of *England*. Now in that Statute of 1 *Eliz.* there is this Clauſe:

And for the due Execution hereof, the Queen's Moſt Excellent Majeſty, the Lords Spiritual and Temporal, and all the Commons in this preſent Parliament aſſembled, do, in God's Name, earneſtly require and charge all the Archbiſhops and Biſhops, and other Ordinaries, that they do

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do endeavour themſelves, to the utmoſt of their Knowledges, that the due and true Execution hereof may be had throughout their Dioceſes and Charges, as they will anſwer before God for ſuch Evils and Plagues wherewith Almighty God may juſtly puniſh his People, for neglecting this good and wholeſome Law.

This is the Charge that lies upon the Biſhops, to take Care of the Execution of that Law; and I ſhall pray, by and by, that it may be read to the Jury.

Mr. Sol. Gen. That is very well indeed! To what Purpoſe?

Sir *Robert Sawyer*. So that, my Lord, by this Law it is plain, that my Lords the Biſhops, upon Pain of bringing upon themſelves the Imprecation of this Act of Parliament, are obliged to ſee it executed; and then, my Lord, when any Thing comes under their Knowledge, eſpecially if they are to be Actors in it, that has ſuch a Tendency to deſtroy the very Foundations of the Church, as the Suſpenſion of all the Laws that relate to the Church muſt do, it concerns them, that have no other Remedy to addreſs the King, by Petition, about it.

For that, Mr. Attorney, my Lord has agreed, That if a proper Remedy be purſued in a proper Court, for a Grievance complained of, though there may be many hard Words that elſe would be ſcandalous, yet, being in a regular Courſe, they are no Scandal: And ſo it is ſaid in *Lake*'s Caſe, in my Lord *Hobart*.

My Lord, we muſt appeal to the King, or we can appeal to nobody, to be relieved againſt an Order of Council, with which we are aggrieved; and it is our Duty ſo to do, according to the Care that the Law hath placed in us.

Beſides, my Lord, the Biſhops were commanded by this Order, to do an Act relating to their Eccleſiaſtical Function; to diſtribute it to be read to their Clergy: And how could they in Conſcience do it, when they thought Part of the Declaration was not according to Law?

Pray, my Lord, what has been the Reaſon of his Majeſty's conſulting of his Judges? And if his Majeſty, or any the great Officers, by his Command, are about to do any Thing that is contrary to Law, was it ever yet an Offence to tell the King ſo? I always looked upon it as the Duty of an Officer or Magiſtrate, to tell the King what is Law, and what is not Law.

In *Cavendiſh*'s Caſe, in the Queen's Time, there was an Office granted of the Return of the Writs of Superſedeas, in the Court of *Common-Pleas*; and he comes to the Court and deſires to be put into the Poſſeſſion of the Office: The Court told him, They could do nothing in it, but he muſt bring his Aſſize: He applies to the Queen, and ſhe ſends, under the Privy Seal, a Command to ſequeſter the Profits, and to take Security to anſwer the Profits as the Judgment of the Law ſhould go: But the Judges there return an Anſwer, That it was againſt Law, and they could not do it: Then there comes a ſecond Letter reciting the Former, and commanding their Obedience: The Judges returned for Anſwer, They were upon their Oaths, and were ſworn to keep the Laws, and would not do it.

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My Lord, the like was done in the Time of my Lord *Hobart*: We have it reported in *Anderſon*, in a Caſe where a Prohibition had gone: There came a Meſſage from Court, that a Conſultation ſhould be granted; and that was a Matter wherein there were various Opinions, whether it was *ex neceſſitate*, or Diſcretionary: But there they returned, That it was againſt Law for any ſuch Meſſage to be ſent.

Now here, my Lord, is a Caſe full as ſtrong: My Lords the Biſhops were commanded to do an Act, which they conceived to be againſt Law, and they declined it, and tell the King the Reaſon; and they have done it in the moſt humble Manner that could be, by Way of Petition. If they had done (as the Civil Law terms it) *reſcribere* generally, that had been lawful; but here they have done it in a more reſpectful Manner, by an humble Petition: If they had ſaid the Law was otherwiſe, that ſure had been no Fault: But they do not ſo much as that, but they only ſay, It was ſo declared in Parliament; and they declare it with all Humility and Dutifulneſs. So that, my Lord, if we conſider the Perſons of the Defendants, they have not acted as Buſy-bodies; and therefore, as this Caſe is, when we have given our Evidence, here will be an Anſwer to all the Implications of Law that are contained in this Information: For they would have this Petition work by Implication of Law, to make a Libel of it; but, by what I have ſaid, it will appear, there was nothing of Sedition, nothing of Malice, nothing of Scandal in it; nothing of the Salt, and Vinegar, and Pepper, that they have put into the Caſe. We ſhall prove the Matters that I have opened for our Defence; and then, I dare ſay, your Lordſhip and the Jury will be of Opinion, we have done nothing but our Duty.

Mr. *Finch* ſeconded Sir *Robert Sawyer*, and inſiſted, That the Power of abrogating Laws was as much a Part of the Legiſlature, as the Power of making Laws: That a Power to lay the Laws aſleep and ſuſpend Laws, was equal to the Power of abrogating them; for they were no longer in Being as Laws, while they are ſo laid aſleep or ſuſpended: Then if this Declaration was founded upon a Part of the Legiſlature, which muſt by all Men be acknowledged not to reſide in the King alone, but in the King, Lords, and Commons, it could not be a legal and true Power and Prerogative.

Mr. Serjeant *Pemberton* and Mr. *Pollexfen*, two more of the Biſhops Counſel, alſo maintained, That the Kings of *England* had no Power to ſuſpend or diſpenſe with the Laws; and that it was no Crime to petition the King, or inform him if he was miſtaken in Law: That it was allowed daily in *Weſtminſter-Hall* to argue againſt the King's Grants, and ſay he was deceived in his Grants: That the Laws of Uniformity were made upon a Foreſight of the Miſchiefs that might come by falſe Religions in this Kingdom, and particularly

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cularly to keep out the *Romiſh* Religion *(which was the very worſt of all Religions)* from prevailing amongſt us: That this was the very Deſign of the Act for eſtabliſhing the Teſt, entitled, *An Act to prevent Dangers that may happen from Popiſh Recuſants*; and if the King might ſuſpend the Laws of *England* which concernedReligion, they knew no other Laws but he might ſuſpend; and then how precarious the Lives, Liberties, and Properties of the Subjects would be, ought to be conſidered.

The Evidence produced for the Biſhops.

Then the Biſhops Counſel produced ſome Records, Statutes, and Declarations of Parliament, to ſupport the Doctrines they had advanced.

And firſt the Record impowering King *Richard* II. to diſpenſe with the Statute of Proviſors, was read.

By this Record it appears, That a Power was given by the Commons to the King, that he, with the Aſſent of the Lords, might diſpenſe with the Statute of Proviſors till the next Parliament, reſerving a Power to the Commons to diſagree to, and retract that Conſent of theirs, in the next Parliament, if they thought fit: And they proteſt that this Aſſent, which was a Novelty, and had not been done before that Time, ſhould not be drawn into Example or Conſequence for the Time to come; and pray the King, that their Proteſtation may be entered on Record in the Roll of Parliament; and the King commanded it to be done as they deſired.

Sir *George Treby* obſerved hereupon, That the Statute of Proviſors, thus diſpenſed with, was a Penal Law, and concerned Eccleſiaſtical Affairs, *viz.* The Collating and Preſenting to Biſhopricks, Benefices, *&c.*

Then the Journal of the Houſe of Lords being produced, his late Majeſty's Speech of the 18th of *February*, 1662, was read; wherein was a Clauſe, from whence the Defendants argued, That the King himſelf did not apprehend he had a diſpenſing Power, *(viz.) And yet, if the Diſſenters will demean themſelves peaceably and modeſtly under the Government, I could heartily wiſh I had ſuch a Power of Indulgence, to uſe upon Occaſion.*

Then the Biſhops Counſel proceeded to ſhew, That the Lords, in Compliance with the King's Deſire, ordered a Bill to be brought in, to enable his Majeſty to diſpenſe with the Act of Uniformity, or with any other Laws requiring Oaths, or Subſcriptions, or Conformity to the Diſcipline of the Eſtabliſhed Church.

Then Part of an Addreſs of the Commons, in Anſwer to the King's Speech, was read; wherein they tell his Majeſty, *That it was not adviſable to grant any Indulgence to thoſe Perſons, who preſumed to diſſent from the Act of Uniformity and the Religion eſtabliſhed: And that the Act of Uniformity could not be diſpenſed with, but by Act of Parliament.*

And Part of the King's Speech on the 5th of *February*, 1672, was read; wherein he ſays, *He had put forth a Declaration for Indulgence to Diſſenters.*

An Addreſs of the Commons, of the 4th of *February*, in Anſwer to it, was alſo read; wherein they ſay, *That they found themſelves bound in Duty to inform his Majeſty, That Penal Statutes, in Matters Eccleſiaſtical, cannot be ſuſpended but by an Act of Parliament*; and therefore beſeech his Majeſty that the ſaid Laws may have their free Courſe, until it ſhall be otherwiſe provided for by Act of Parliament.

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The King's Meſſage in Anſwer to that Addreſs, was alſo read; *(viz.)* That his Majeſty did not pretend to the Right of ſuſpending any Laws, wherein the Properties, Rights, or Liberties of any of his Subjects, were concerned; nor to alter any Thing in the eſtabliſhed Doctrine or Diſcipline of the Church of *England:* But his only Deſign in this was, to take off the Penalties the Statutes inflicted on Diſſenters.

The Commons Anſwer of the 26th of *February*, 1672, in Anſwer to the ſaid Meſſage, was read; wherein they tell his Majeſty, That the aboveſaid Anſwer to their Petition and Addreſs, is not ſufficient to clear the Apprehenſions that may juſtly remain in the Minds of his People, by his Majeſty's having claimed a Power to ſuſpend Penal Laws in Matters Eccleſiaſtical, and which his Majeſty did ſtill ſeem to aſſert in the ſaid Anſwer to be entruſted in the Crown, and never queſtioned in the Reigns of any of his Anceſtors: *Wherein they humbly conceived his Majeſty had been miſinformed*; ſince no ſuch Power was ever claimed or exerciſed by any of his Majeſty's Predeceſſors; and if it ſhould be admitted, might tend to the interrupting the free Courſe of the Laws, and altering the Legiſlative Power, which had been always acknowledged to reſide in the King and the two Houſes of Parliament: They therefore, with an Unanimous Conſent, became again moſt humble Suitors unto his Sacred Majeſty, that he would be pleaſed to give them a full and ſatisfactory Anſwer to their ſaid Petition and Addreſs; and that his Majeſty would take ſuch effectual Order, that the Proceedings in this Matter, might not for the future be drawn into Conſequence.

His Majeſty's Speech of the 8th of *March*, 1672, alſo was read; wherein he ſays, If there were any Scruple remaining with them concerning the Suſpenſion of Penal Laws, he then faithfully promiſed them, that what had been done in that Particular, ſhould not for the future be drawn either into Conſequence or Example; and that, as he daily expected from them a Bill for his Supply, ſo he aſſured them he ſhould as willingly paſs any other Bill they ſhould offer him, that might tend to the giving them Satisfaction in all their juſt Grievances.

Another Meſſage from his Majeſty to the Houſe, the next Day, by the Lord Chancellor, was alſo read; wherein he ſays, *That he had the laſt Night, in purſuance of what he then intended and declared in the Morning, concerning the Suſpenſion of Penal Laws not being for the future drawn either into Conſequence or Example, cauſed the Original Declaration under the Great Seal, to be cancelled in his Preſence: Whereof the ſaid Lord Chancellor and ſeveral other Lords of the Council were Witneſſes.*

Then

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Then his Majeſty King *James* II's Speech to both Houſes, 9 *Nov.* 1685. after the ſuppreſſing *Monmouth*'s Rebellion, was read; wherein he ſays, *Let no Man take Exceptions that there are ſome Officers in the Army not qualified according to the late Teſts.*

And afterwards the Commons Addreſs thereupon, 16 *Nov.* 1685. wherein they ſay, That as to Part of his Majeſty's Speech, relating to the Officers of the Army not qualified for their Employments, *They did, out of their bounden Duty, humbly repreſent unto his Majeſty, that thoſe Officers could not by Law be capable of their Employments; and that the Incapacities they bring upon themſelves thereby, can no ways be taken off, but by Act of Parliament.*

That they were ready to paſs a Bill to indemnify them from the Penalties they had incurred; but did beſeech his Majeſty to give ſuch Directions therein for the future, that no Apprehenſions or Jealouſies might remain in the Hearts of his Majeſty's Subjects.

Then a Paragraph out of the Statute of 1 Eliz. *chap.* 2. *was read, Whereby the Biſhops are charged to ſee the Laws in relation to Uniformity executed, as they will anſwer it before God, for ſuch Evils and Plagues wherewith Almighty God may juſtly puniſh his People for neglecting that good and wholeſome Law.*

After which the Biſhops Counſel proceeded to make their Obſervations on the Whole; and firſt Mr. Serjeant *Levinz*.

Serjeant Levinz's Argument.

Mr. Serjeant *Levinz*. Now, my Lord, if your Lordſhip pleaſes, the Charge is a Charge for a Libel; and there are two Things to be conſidered.

Firſt, Whether the Biſhops did deliver this Paper to the King? But that we leave upon the Evidence that has been given; only we ſay, there has been no direct Proof of that.

In the next place, ſuppoſing they did deliver this Petition to the King, Whether this be a Libel, upon the Matter of it, the Manner of delivering it, or the Perſons that did it?

And with Submiſſion, my Lord, this cannot be a Libel, although it be true that they did ſo deliver it.

Firſt, my Lord, there is a little Diſingenuity offered to my Lords the Biſhops in only ſetting forth Part, and not the Whole; in only reciting the Body, and not the Prayer.

But, my Lord, with your Lordſhip's Favour, taking the Petitionary Part, and adding to it the other, it quite alters the Nature of the Thing; for it may be, a Complaint without ſeeking Redreſs might be an ill Matter; but here taking the Whole together, it appears to be a Complaint of a Grievance, and a Deſire to be eaſed of it.

With your Lordſhip's Favour, the Subjects have a Right to petition the King in all their Grievances; ſo ſay all our Books of Law; and ſo ſays the Statute of the 13th of the late King: They may petition, and come and deliver their Petition under the Number of Ten, as heretofore they might have done (ſays the Statute): So that they at all Times have had a Right ſo to do; and indeed if they had not, it were the moſt lamentable Thing in the World, that Men muſt have Grievances upon them, and yet they not to be admitted to ſeek Relief in an humble Way.

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Now, my Lord, this is a Petition ſetting forth a Grievance, and praying his Majeſty to give Relief. And what is this Grievance? It is that Command of his, by that Order made upon my Lords the Biſhops, to diſtribute the Declaration, and cauſe it to be read in the Churches. And pray, my Lord, let us conſider what the Effects and Conſequences of that Diſtribution and Reading is: It is to tell the People, that they need not ſubmit to the *Act of Uniformity*, nor to any Act of Parliament made about Eccleſiaſtical Matters, for they are ſuſpended and diſpenſed with. This my Lords the Biſhops muſt do, if they obey this Order: But your Lordſhip ſees, if they do it, they lie under an *Anathema* by the Statute of 1 *Eliz.* for there they are under a Curſe if they do not look to the Preſervation and Obſervation of that Act: But this Command to diſtribute and read the Declaration, whereby all theſe Laws are diſpenſed with, is to let the People know, they will not do what the Act requires of them.

Now, with your Lordſhip's Favour, my Lords the Biſhops lying under this Preſſure, the Weight of which was very grievous upon them, They, by Petition, apply to the King to be eaſed of it, which they might do as Subjects: Beſides, my Lord, they are Peers of the Realm, and were moſt of them ſitting as ſuch in the laſt Parliament, where (as you have heard) it was declared, ſuch a Diſpenſation could not be; and then in what a Caſe ſhould they have been if they ſhould have diſtributed this Declaration, which was ſo contrary to their own Actings in Parliament? What could they have anſwered for themſelves, had they thus contributed to this Declaration, when they had themſelves before declared that the King could not diſpenſe?

And that this was no new Thing, for it had been ſo declared in a Parliament before in two Seſſions of it, in the late King's Reign, within a very little Time one of another; and ſuch a Parliament that were ſo liberal in their Aids to the Crown, that a Man would not think they ſhould go about to deprive the Crown of any of its Rights: It was a Parliament that did as great Services for the Crown as ever any did; and therefore there is no Reaſon to ſuſpect that, if the King had had ſuch a Power, they would have appeared ſo earneſt againſt it.

But, my Lord, if your Lordſhip pleaſes, theſe are not the beginnings of this Matter; for we have ſhewed you, from the 15th of *Richard* the IId, that there was a Power granted by the Parliament to the King, to diſpenſe with a particular Act of Parliament; which argues, that it could not be without an Act of Parliament: And in 1662 it is ſaid expreſly, that they can not be diſpenſed but by an Act of Parliament. 'Tis ſaid ſo again in 1672, the King was then pleaſed to aſſume to himſelf ſuch a Power as is pretended to in this Declaration: Yet, upon Information from his Houſes of Parliament, the King declared himſelf ſatisfied that he had no ſuch Power, cancelled his Declaration, and promiſed that it

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it ſhould not be drawn into Conſequence or Example. And ſo the Commons, by their Proteſtation, ſaid, in *Richard* II's Time that it was a Novelty, and ſhould not be drawn into Conſequence or Example.

Now, my Lord, if your Lordſhip pleaſes, if this Matter that was commanded the Biſhops to do were ſomething which the Law did not allow of, ſurely then my Lords the Biſhops had all the Reaſon in the World to apply themſelves to the King, in an humble Manner to acquaint him Why they could not obey his Commands, and to ſeek Relief againſt that which lay ſo heavy upon them.'

Truly, my Lord, Mr. *Attorney* was very right in the opening of this Cauſe at firſt; that is, That the Government ought not to receive Affronts, nor the inferior Officers are not to be affronted; a Juſtice of the Peace, ſo low a Man in Office, is not. For a Man to ſay to a Juſtice of Peace, when he is executing his Office, that he does not do right, is a great Crime; and Mr. *Attorney* ſaid right in it. But ſuppoſe a Juſtice of Peace were making of a Warrant to a Conſtable, to do ſomething that was not legal for him to do; if the Conſtable ſhould petition this Juſtice of the Peace, and therein ſet forth, Sir, You are about to command me to do a Thing which I conceive is not legal; ſurely that would not be a Crime that he was to be puniſhed for; for he does but ſeek Relief, and ſhew his Grievance in a proper Way, and the Diſtreſs he is under.

My Lord, this is the Biſhops Caſe, with Submiſſion: They are under a Diſtreſs, being commanded to do a Thing which they take not to be Legal; and they, with all Humility, by way of Petition, acquaint the King with this Diſtreſs of theirs, and pray him, that he will pleaſe to give Relief.

My Lord, there is no Law but is either an Act of Parliament, or the Common Law: For an Act of Parliament, there is none for ſuch a Power; all that we have of it in Parliamentary Proceedings is againſt it; and for the Common Law (ſo far as I have read it), I never did meet of any thing of ſuch a Nature, as a Grant or Diſpenſation that pretended to diſpenſe with any one whole Act of Parliament. I have not ſo much as heard of any ſuch thing mentioned by any of the King's Counſel: But here, my Lord, is a Diſpenſation that diſpenſes with a great many Laws at once: Truly I cannot take upon me to tell how many; there may be forty, or above, for ought I know.

Therefore, my Lord, the Biſhops lying under ſuch a Grievance as this, and under ſuch a Preſſure, being ordered to diſtribute this Declaration in all their Churches, which was to tell the People they ought to be under no Law in this Caſe, which ſurely was a very great Preſſure both in Point of Law and Conſcience too, they lying under ſuch Obligations to the contrary, as they did; with Submiſſion to your Lordſhip, and you Gentlemen of the Jury, if they did deliver this Petition, (Publiſhing of it I will not talk of, for there has been no Proof of a Publication, but a Delivering of a Petition to his Majeſty in the moſt ſecret and decent Manner that could be imagined) my Lords, the Biſhops are not guilty of the Matter charged upon them in this Information. It has been expreſly proved that they did not go to diſperſe it abroad, but only delivered it to the King himſelf: and in ſhort, my Lord, if this ſhould be a Libel, I know not how ſad the Condition of us all would be, if we may not petition when we ſuffer.

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Mr. *Finch*. My Lord, I challenge them to ſhew us any one Inſtance of ſuch a Declaration, ſuch a general Diſpenſation of Laws, from the Conqueſt till 1672: The firſt Umbrage of ſuch a Thing is that of *Car*. II. 1662; but your Lordſhip hears the Declaration of the Parliament upon it. Before that, as there was no ſuch Thing, ſo your Lordſhip ſees what the Parliament did to enable the King (not to do this Thing but ſomething like it) in *Richard* the Second's Time, where you ſee the Parliament did give the King a Power to diſpenſe with the Statute of Proviſors for a Time; but at the ſame Time declared that very Grant of their own to be a Novelty, and that it ſhould not be drawn into Conſequence or Example.

My Lord, we ſhall leave it upon this Point: To ſuſpend Laws is all one as to abrogate Laws; for ſo long as a Law is ſuſpended, whether the Suſpenſion be Temporary, or whether it be for ever; whether it be at once or at ſeveral Times; the Law is abrogated to all Intents and Purpoſes: But the Abrogation of Laws is Part of the Legiſlature, that Legiſlative Power is lodged (as I ſaid before, and I could never find it otherwiſe in all our Law) in King, Lords, and Commons, -----.

Lord Chief Juſtice. You did open that before, Mr. *Finch*.

Mr. *Finch*. With this, my Lord, That my Lords the Biſhops, finding this Order made upon them to publiſh this Declaration, did what in Duty they were bound to do; and unleſs the Jury do find, that they have done that which is contrary to Law and to the Duty of their Places, and that this Petition is a Libel, and a ſeditious Libel, with an Intent to ſtir up Sedition among the People (we rely upon it), my Lords the Biſhops can never be found guilty upon this Information.

Lord Chief Juſtice. Have you now done, Gentlemen?

Mr. *Finch*. Yes, my Lord, till they give us further Occaſion: If they have any other Evidence to offer, we muſt anſwer it; if not, this the Anſwer we give to what they have ſaid.

Mr. Sollicitor General. We make no Bargain with you: If you have done, ſay ſo.

Lord Chief Juſtice. You muſt know, that you are not to have the laſt Word.

Mr. Sollicitor General. You have been three Hours already: If you have any more to ſay, pray conclude.

Mr. *Finch*. If they ſay they have no more Evidence, then we know what we have to do.

Lord

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Lord Chief Juſtice. If you do ſay any thing more, pray let me adviſe you one thing; don't ſay the ſame Thing over and over again; for after ſo much Time ſpent, it is irkſome to all Company, as well as to me.

Mr. *Finch.* My Lord, we have no more Evidence to offer to your Lordſhip at preſent unleſs they, by offering new Evidence, give us Occaſion to Reply upon them.

Lord Chief Juſtice. Gentlemen you ſhall have all the Legal Favour and Advantage that can be; but, pray, let us keep to an orderly decent Method of Proceeding.

Sir *Robert Sawyer.* Pray, my Lord, favour me a Word before we conclude: My Lord, I do find very few Attempts of this Nature, in any King's Reign.

In the Reign of *Henry* IV. there was an Act of Parliament, that Foreigners ſhould have a free Trade in the City of *London*, notwithſtanding the Franchiſes of *London:* After the Parliament roſe, the King iſſued out his Proclamation, forbidding the Execution of that Law, and commanding that it ſhould be in Suſpence *uſque ad proximum Parliamentum*; yet that was held to be againſt Law.

Lord Chief Juſtice. Sir *Robert Sawyer*, that which you are to look to, is the Publiſhing of this Paper, and whether it be a Libel or no: And as to the Buſineſs of the Parliaments you mentioned, they are not to the Purpoſe.

Sir *Robert Sawyer.* My Lord, I ſay I would put it where the Queſtion truly lies; if they do not diſpute the Point, then we need not labour it; but I do not know whether they will or no, and therefore I beg your Lordſhip's Favour to mention one Caſe more, and that is upon the Statute of 31 *Hen.* VIII. *cap.* 8. which enables the King by Proclamation in many Caſes to create the Law, which Statute was repealed, 1 *Edw.* VI. *cap* 12. That very Act does recite, that the Law is not to be altered or reſtrained but by Act of Parliament, and therefore the Parliament enables the King to do ſo and ſo: But that was ſuch a Power, that the Parliament thought not fit to continue, and it was afterwards repealed; but it ſhews, that at that Time the Parliament was of the ſame Opinion, as to this Matter that other Parliaments have been ſince.

Mr. *Somers.* My Lord, I would only mention the great Caſe of *Thomas* and *Sorrel* in the *Exchequer-Chamber*, upon the Validity of a Diſpenſation of the Statute of *Edward* VI. touching ſelling of Wine: There it was the Opinion of every one of the Judges, and they did lay it down as a ſettled Poſition, that there never could be an Abrogation, or a Suſpenſion (which is a Temporary Abrogation) of an Act of Parliament, but by the Legiſlative Power. That was a Foundation laid down quite through the Debate of the Caſe: Indeed it was diſputed, how far the King might diſpenſe with the Penalties in ſuch a particular Law, as to particular Perſons; but it was agreed by all, that the King had no Power to ſuſpend any Law: And, my Lord, I dare appeal to Mr. *Attorney General* himſelf whether in the Caſe of *Godwin* and *Hales*, which was lately in this Court, to make good that Diſpenſation, he did not uſe it as an Argument then, that it could not be expounded into a Suſpenſion: He admitted it not to be in the King's Power to ſuſpend a Law; but that he might give a Diſpenſation to a particular Perſon, was all that he took upon him to juſtify at that Time.

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My Lord, by the Law of all civilized Nations, if the Prince does require ſomething to be done, which the Perſon (who is to do it) takes to be unlawful, it is not only lawful but his Duty, *reſcribere Principi*; this is all that is done here, and that in the moſt humble Manner that could be thought of. Your Lordſhip will pleaſe to obſerve how far it went, how careful they were that they might not any way juſtly offend the King: They did not interpoſe, by giving Advice as Peers; they never ſtirred till it was brought home to themſelves; when they made their Petition, all they beg is, That it may not ſo far be inſiſted upon by his Majeſty, as to oblige them to read it; whatever they thought of it, they do not take upon them to deſire the Declaration to be revoked.

My Lord, as to Matters of Fact alledged in the ſame Petition, that they are perfectly true, we have ſhewn by the Journal of both Houſes. In every one of thoſe Years which are mentioned in the Petition, the Power of Diſpenſation was conſidered in Parliament, and upon Debate, declared to be contrary to Law; there could be no Deſign to diminiſh the Prerogative, becauſe the King hath no ſuch Prerogative.

Seditious, my Lord, it could not be, nor could poſſibly ſtir up Sedition in the Minds of the People, becauſe it was preſented to the King in private and alone: Falſe it could not be, becauſe the Matter of it is true: There could be nothing of Malice, for the Occaſion was not ſought, the Thing was preſſed upon them: And a Libel it could not be, becauſe the Intent was Innocent, and they kept within the Bounds ſet by the Act of Parliament, that gives the Subject Leave to apply to his Prince by Petition, when he is aggrieved.

Then Mr. *Sollicitor* (Sir *William Williams*) ſummed up the Evidence, and made his Obſervations on it for the King.

Mr. Solicitor General. My Lord, and Gentlemen of the Jury, I am of Council in this Caſe for the King, and I ſhall take Leave to proceed in this Method: Firſt, I ſhall put the Caſe of my Lords the Biſhops, and then conſider the Arguments that have been uſed in their Defence, and anſwer them as much as is Material to be anſwered; and then leave it to your Lordſhip, and the Jury's Conſideration, Whether what has been ſaid by theſe Gentlemen, weigh any Thing in this Caſe?

Mr. Solicitors Argument for the King.

Firſt, my Lord, I take it for granted, and I think the Matter is pretty plain by this Time, by my Lord Preſident's Evidence and their own Confeſſion, that it is not to be diſputed but that this Paper was preſented by theſe Lords to the King: I think there is no great Difficulty in that Matter at all; but I juſt touch upon it, becauſe I would follow them in their own Method.

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it ſhould not be drawn into Conſequence or Example. And ſo the Commons, by their Proteſtation, ſaid, in *Richard* II's Time that it was a Novelty, and ſhould not be drawn into Conſequence or Example.

Now, my Lord, if your Lordſhip pleaſes, if this Matter that was commanded the Biſhops to do were ſomething which the Law did not allow of, ſurely then my Lords the Biſhops had all the Reaſon in the World to apply themſelves to the King, in an humble Manner to acquaint him Why they could not obey his Commands, and to ſeek Relief againſt that which lay ſo heavy upon them.

Truly, my Lord, Mr. *Attorney* was very right in the opening of this Cauſe at firſt; that is, That the Government ought not to receive Affronts, nor the inferior Officers are not to be affronted; a Juſtice of the Peace, ſo low a Man in Office, is not. For a Man to ſay to a Juſtice of Peace, when he is executing his Office, that he does not do right, is a great Crime; and Mr. *Attorney* ſaid right in it. But ſuppoſe a Juſtice of Peace were making of a Warrant to a Conſtable, to do ſomething that was not legal for him to do; if the Conſtable ſhould petition this Juſtice of the Peace, and therein ſet forth, Sir, You are about to command me to do a Thing which I conceive is not legal; ſurely that would not be a Crime that he was to be puniſhed for; for he does but ſeek Relief, and ſhew his Grievance in a proper Way, and the Diſtreſs he is under.

My Lord, this is the Biſhops Caſe, with Submiſſion: They are under a Diſtreſs, being commanded to do a Thing which they take not to be Legal; and they, with all Humility, by way of Petition, acquaint the King with this Diſtreſs of theirs, and pray him, that he will pleaſe to give Relief.

My Lord, there is no Law but is either an Act of Parliament, or the Common Law: For an Act of Parliament, there is none for ſuch a Power; all that we have of it in Parliamentary Proceedings is againſt it; and for the Common Law (ſo far as I have read it), I never did meet of any thing of ſuch a Nature, as a Grant or Diſpenſation that pretended to diſpenſe with any one whole Act of Parliament. I have not ſo much as heard of any ſuch thing mentioned by any of the King's Counſel: But here, my Lord, is a Diſpenſation that diſpenſes with a great many Laws at once: Truly I cannot take upon me to tell how many; there may be forty, or above, for ought I know.

Therefore, my Lord, the Biſhops lying under ſuch a Grievance as this, and under ſuch a Preſſure, being ordered to diſtribute this Declaration in all their Churches, which was to tell the People they ought to be under no Law in this Caſe, which ſurely was a very great Preſſure both in Point of Law and Conſcience too, they lying under ſuch Obligations to the contrary, as they did; with Submiſſion to your Lordſhip, and you Gentlemen of the Jury, if they did deliver this Petition, (Publiſhing of it I will not talk of, for there has been no Proof of a Publication, but a Delivering of a Petition to his Majeſty in the moſt ſecret and decent Manner that could be imagined) my Lords, the Biſhops are not guilty of the Matter charged upon them in this Information. It has been expreſly proved that they did not go to diſperſe it abroad, but only delivered it to the King himſelf: and in ſhort, my Lord, if this ſhould be a Libel, I know not how ſad the Condition of us all would be, if we may not petition when we ſuffer.

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Mr. *Finch*. My Lord, I challenge them to ſhew us any one Inſtance of ſuch a Declaration, ſuch a general Diſpenſation of Laws, from the Conqueſt till 1672: The firſt Umbrage of ſuch a Thing is that of *Car*. II. 1662; but your Lordſhip hears the Declaration of the Parliament upon it. Before that, as there was no ſuch Thing, ſo your Lordſhip ſees what the Parliament did to enable the King (not to do this Thing but ſomething like it) in *Richard* the Second's Time, where you ſee the Parliament did give the King a Power to diſpenſe with the Statute of Proviſors for a Time; but at the ſame Time declared that very Grant of their own to be a Novelty, and that it ſhould not be drawn into Conſequence or Example.

My Lord, we ſhall leave it upon this Point: To ſuſpend Laws is all one as to abrogate Laws; for ſo long as a Law is ſuſpended, whether the Suſpenſion be Temporary, or whether it be for ever; whether it be at once or at ſeveral Times; the Law is abrogated to all Intents and Purpoſes: But the Abrogation of Laws is Part of the Legiſlature, that Legiſlative Power is lodged (as I ſaid before, and I could never find it otherwiſe in all our Law) in King, Lords, and Commons, -----.

Lord Chief Juſtice. You did open that before, Mr. *Finch*.

Mr. *Finch*. With this, my Lord, That my Lords the Biſhops, finding this Order made upon them to publiſh this Declaration, did what in Duty they were bound to do; and unleſs the Jury do find, that they have done that which is contrary to Law and to the Duty of their Places, and that this Petition is a Libel, and a ſeditious Libel, with an Intent to ſtir up Sedition among the People (we rely upon it), my Lords the Biſhops can never be found guilty upon this Information.

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My Lord, by the Law of all civilized Nations, if the Prince does require ſomething to be done, which the Perſon (who is to do it) takes to be unlawful, it is not only lawful but his Duty, *reſcribere Principi*; this is all that is done here, and that in the moſt humble Manner that could be thought of. Your Lordſhip will pleaſe to obſerve how far it went, how careful they were that they might not any way juſtly offend the King: They did not interpoſe, by giving Advice as Peers; they never ſtirred till it was brought home to themſelves; when they made their Petition, all they beg is, That it may not ſo far be inſiſted upon by his Majeſty, as to oblige them to read it; whatever they thought of it, they do not take upon them to deſire the Declaration to be revoked.

My Lord, as to Matters of Fact alledged in the ſame Petition, that they are perfectly true, we have ſhewn by the Journal of both Houſes. In every one of thoſe Years which are mentioned in the Petition, the Power of Diſpenſation was conſidered in Parliament, and upon Debate, declared to be contrary to Law; there could be no Deſign to diminiſh the Prerogative, becauſe the King hath no ſuch Prerogative.

Seditious, my Lord, it could not be, nor could poſſibly ſtir up Sedition in the Minds of the People, becauſe it was preſented to the King in private and alone: Falſe it could not be, becauſe the Matter of it is true: There could be nothing of Malice, for the Occaſion was not ſought, the Thing was preſſed upon them: And a Libel it could not be, becauſe the Intent was Innocent, and they kept within the Bounds ſet by the Act of Parliament, that gives the Subject Leave to apply to his Prince by Petition, when he is aggrieved.

Then Mr. *Sollicitor* (Sir *William Williams*) ſummed up the Evidence, and made his Obſervations on it for the King.

Mr. Solicitors Argument for the King.

Mr. Solicitor General. My Lord, and Gentlemen of the Jury, I am of Council in this Caſe for the King, and I ſhall take Leave to proceed in this Method: Firſt, I ſhall put the Caſe of my Lords the Biſhops, and then conſider the Arguments that have been uſed in their Defence, and anſwer them as much as is Material to be anſwered; and then leave it to your Lordſhip, and the Jury's Conſideration, Whether what has been ſaid by theſe Gentlemen, weigh any Thing in this Caſe?

Firſt, my Lord, I take it for granted, and I think the Matter is pretty plain by this Time, by my Lord Preſident's Evidence and their own Confeſſion, that it is not to be diſputed but that this Paper was preſented by theſe Lords to the King: I think there is no great Difficulty in that Matter at all; but I juſt touch upon it, becauſe I would follow them in their own Method.

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Then, my Lord, let us take this Caſe as it is, upon the Nature of the Petition, and the Evidence that they have given; and then let us ſee, whether that will juſtify the Thing that is done: For the Buſineſs of Petitioning, I would diſtinguiſh, and enquire, Whether my Lords the Biſhops, out of Parliament, can preſent any Petition to the King? I do agree, that in Parliament the Lords and Commons may make Addreſſes to the King, and ſignify their Deſires, and make known their Grievances there; and there is no doubt but that is a natural and proper way of Application: For in the beginning of the Parliament, there are Receivers of Petitions appointed, and upon Debates, there are Committees appointed to draw up Petitions and Addreſſes; but to come and deduce an Argument, that becauſe the Lords in Parliament have done thus, (there being ſuch Methods of Proceedings uſual in Parliaments) therefore my Lords the Biſhops may do it out of Parliament, that is certainly a *Non ſequitur*; no ſuch Concluſion can be drawn from thoſe Premiſes.

My Lord, I ſhall endeavour to lay the Fact before you as it really is, and then conſider what is proper for the Court to take Notice of, as Legal Proof or Evidence: And I take it, all thoſe Precedents that they have produced, of what the Lords did, and what the Commons did, in Parliament, is no Warrant for them to ſhelter themſelves under, againſt the Information here in Queſtion.

Here Mr. Juſtice Powel *ſpake aſide to the Lord Chief Juſtice, thus:*

Mr. Juſtice *Powel.* My Lord, this is ſtrange Doctrine; ſhall not the Subject have Liberty to petition the King, but in Parliament? If that be Law, the Subject is in a miſerable Caſe.

Lord Chief Juſtice. Brother let him go on; we will hear him out, though I approve not of his Poſition.

Mr. Solicitor General. The Lords may addreſs to the King in Parliament, and the Commons may do it; but therefore, that the Biſhops may do it, out of Parliament, does not follow: I heard nothing ſaid that could have given Colour to ſuch a Thing, but the Curſe that has been read in 1 *Eliz.*

But pray, my Lord, let us conſider that Evidence they have given; they have begun with that Record in *Richard* the Second's Time; and what is that? That the King may diſpenſe with the Statute of Proviſors, till the Meeting of the next Parliament, and a Proteſtation of the Commons at the End of it, Whether that be an Act of Parliament that is Declaratory of the Common Law, or Introductory of a new Law, *non conſtat*; and for ought appears, it might be a Declaratory Act; and if ſo, it is a Proof of the King's Prerogative of Diſpenſing. It might be an Act in Affirmance of the King's Prerogative, as there are a great many ſuch, we very well know; and generally moſt of the Laws in that Kind, are in Affirmance of the King's Power; ſo that the Law turns as an Argument for the King's Prerogative, and they have given him that which will turn upon themſelves; So it ſtood in *Richard* the Second's Time; but whether that be an Argument one way or other Concluſive, is left to your Lordſhip and the Jury.

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Ay but, ſay they, there is no Execution of ſuch a Power, till very lately; and the firſt Inſtance they produce, is, that in the Year 1662: But your Lordſhip knows, that before the Reign of *Henry* IV. there was great Juriſdiction aſſumed by the Lords in Original Cauſes: Then comes the Statute of Appeals, 1 *Hen.* IV. which takes Notice, that before that Time, the Lords had aſſumed an Original Juriſdiction in all Cauſes, and would proceed, and determine them in Parliament and out of Parliament; and it fell out to be ſo great a Grievance, that it was thought neceſſary to make a Law againſt it, that Appeals in Parliament ſhould be aboliſhed and deſtroyed, and then comes that Law in Favour of the Subjects of *England*, and that ſettles the Bounds between the King and the Lords in a great meaſure: Before that Time, the Lords were grown very powerful, and where there is a Power, there always will be Applications: And what is the Effect of that Statute, 1 *Hen.* IV? for all that we endeavour is, to make Things as plain as can be, that no further Applications, no Accuſations, no Proceedings in any Caſe whatſoever, be before the Lords in Parliament, unleſs it be by Impeachment of the Commons; ſo that there is the *Salvo*; and the uſe that I make of it, is this: The Commons, by that very Statute, did aboliſh the Power that the Lords had arrogated to themſelves; and Ordered, That they ſhould not meddle with any Cauſe, but upon the Impeachment of the Houſe of Commons, and eſtabliſh the Impeachment of the Commons, which is as antient as the Parliament, for that was never yet ſpoken againſt, the Power of the Commons impeaching any Perſon under the Degree of the Prince, and that is the regular legal Way; and ſo the Commons aſſerted their antient Right, and whatſoever the Lords took Notice of, muſt come by Application of the Commons; then Conferences were to paſs between the Houſes, and both Houſes, by Addreſſes, apply to the King: This is the proper way and Courſe of Parliament, of which my Lord *Cook* ſays, It is known to few, and practiſed by fewer; but it is a venerable honourable Way, and this is the Courſe that ſhould have been taken by my Lords here, and they ſhould have ſtayed till the Complaint had come from the Commons in Parliament, and then it had been regular for them to addreſs to the King: But they were too quick, too nimble.

And whereas the Statute of *Henry* IV. ſays, That no Lord whatſoever ſhall intermeddle with any Cauſe, but by the Impeachment of the Commons, they interpoſe, and give their Advice before their Time; and if there be any Irregularity in Parliament, or out of Parliament, the Commons are to make their Complaint of it; and a Man muſt not be his own Judge, nor his own Carver; nor muſt every Man create Difficulties of his own, nor ſet upon Petitioning in this Sort: But there I lay my Foundation, That in ſuch a Matter as this, there ought to have been the Impeachment of the

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the Commons in Parliament, before theſe Lords could do any Thing: And I know nothing can be ſaid for the Biſhops more than this, that they were under an *Anathema*, under the Curſe that Sir *Robert Sawyer* ſpeaks of; and for Fear of that, they took this irregular Courſe. But ſome would ſay, Better fall into the Hands of God than of Men: Some would ſay ſo, (I ſay) I know not what they would ſay: But theſe being the Methods that theſe Lords ſhould have taken, they ſhould have purſued that Method: The Law ſhould have carved out their Relief and Remedy for them; but they were for going by a new Fancy of their own.

My Lord, the Law continued thus, and was practiſed ſo till 3 *Hen.* VII. where the Grievance was found, that Offences in the Intervals of Parliament could not well be puniſhed: And then comes the Statute that ſets up the Court of Star-Chamber; and there Men were often brought to Judgment and Puniſhment for their Sins: And though very great Power was given them, yet they arrogated to themſelves a greater; and therefore that Court is aboliſhed by the Statute of 15 *Car.* I. And what is the Reaſon of aboliſhing that Statute? Becauſe the Star-Chamber did not keep within their Bounds that the Law ſet them, but aſſumed to themſelves a larger Power than the Law would allow; and grew very exorbitant and very grievous to the Subject. And another Reaſon was, which the Statute of 15 *Car.* I. founded itſelf upon, becauſe there was nothing that was brought in Judgment before that Court, but might be relieved and remedied in the ordinary Methods of Juſtice in the Courts in *Weſtminſter-Hall:* So that upon theſe two Conſiderations, becauſe that Courſe was exorbitant, and becauſe all the Sins and Miſdemeanors that were puniſhed there, might be puniſhed in an ordinary Way of Law in another Court, and therefore there was no Need of that Court; and ſo it was aboliſhed, and the Subject was pretty ſafe. If there was a Crime committed here, a Man might come properly before your Lordſhip into this Court, and have it puniſhed.

My Lord, they find Fault with the Words in the Information, and they ſay, Why are theſe Words put in, *ſeditious*, *malicious?* If the Matter be libellous and ſeditious, we may lawfully ſay ſo; and it is no more than the Law ſpeaks; it reſults out of the Matter it ſelf; and if it be a libellous Paper, the Law ſays, it is maliciouſly and ſeditiouſly done. And theſe Gentlemen need not quarrel with us, for ſo are all the Informations in all Times paſt; and 'tis no more than the *vi & armis*, which is Common Form. It may be ſaid, How can the publiſhing of a Libel be ſaid to be done *vi & armis?* That is only a Suppoſition of Law; and they may as well object to the Concluſion of the Information, that it was *contra Coronam & Dignitatem Domini Regis.* If it be an illegal Thing, or a Libel, theſe are neceſſary Conſequences: It is no more than the ſpeaking of the Law upon the Fact.

But, my Lord, let us a little conſider, whether this Matter were warrantable, and whether they had any Warrant to do what was done: They pretend it was done upon this Account, That the King had ſet forth a Declaration, and had ordered them to read it; which to excuſe themſelves from, they make this Petition, or this Libel, (call it what you will): And they uſe this as the main Argument, That they ſay the King has done illegally; and they tell the King plainly ſo, that it is illegal: For they take Notice of this Declaration, and ſay it is illegal, becauſe it is contrary to the Declarations of Parliament in 1662, 1672, and 1685.

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Pray, my Lord, let us conſider a little, whether there be any Declaration in Parliament that they have given Evidence of: Have they read any Declaration of the Parliament in 1662? What is a Declaration in Parliament, but a Bill that is paſſed by the King, Lords and Commons? That we know to be the Meaning, and no other: If it paſs the Commons it is no Declaration in Parliament; nay, if it paſs the Lords and Commons, it is not a Declaration in Parliament; except it alſo paſs the King. All theſe Things are Nullities, and the Law takes no Notice of them: We have it in our Books over and over; and no Court ought to ſuffer ſuch Evidence to be given. I know theſe Gentlemen are very well acquainted with the Authority in *Fitz-Herbert's*, Title *Parliament:* There was an Act that was ſaid to be by the King and the Lords; but becauſe the Commons did not agree to it, it is declared and adjudged to be a Nullity; and the Court would take no Notice of it. And how can any Man call that a Declaration in Parliament which is only a Vote of the Houſe of Commons, or of the Lords? No ſure; that is one of the Heads I go upon: It's not a Declaration in Parliament, unleſs it be by an Act of Parliament.

Indeed, my Lord, there is another Sort of a Declaration in Parliament before the Lords, as they are a Court of Judicature, and that is a fair Declaration too; for if any Thing comes Judicially before the Lords, either by Writ of Error, or by natural Appeal from any of the other Courts or by Adjournment, and there be any Judgment given, That is a Declaration in Parliament, and may be fairly ſo called. So likewiſe there is another Judicial Declaration, which is, when any Thing comes before the Lords Judicially, upon an Impeachment of the Commons, and they give Judgment, that is, a Declaration in Parliament: But to ſay, that there is any other Declaration in Parliament, is to ſay more than theſe Gentlemen can make out. If they will ſhew me any ſuch, I will ſubmit to them, and not ſpeak a Word againſt my Lords the Biſhops: But if theſe learned Gentlemen cannot ſhew me any ſuch, then they have not ſaid that was true in this Petition, that it was ſo and ſo declared in Parliament.

For let us conſider what there is in this Caſe upon this Evidence; for that in 1662 is only a Vote and an Opinion of the Houſe of Commons: And I always underſtood, and have been told ſo by ſome of the Gentlemen of the other Side, that ſuch a Vote ſignifies nothing: But beſides, it ſeems to be a miſtaken Addreſs;

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dreſs; for they ſay in it, that the Declaration in 1662, which they addreſs againſt, was the firſt Declaration of that Sort, to ſuſpend Laws without Act of Parliament; and yet in the ſame Breath they do take Notice of the King's Declaration from *Breda*. But here is a mighty Argument uſed from the King's Speech, That becauſe he wiſhed he had ſuch a Power, this muſt be declared in Parliament that he had no ſuch Power. Is the Speech of the Prince a Declaration in Parliament? All the Speeches that were made upon the opening of the Parliament, will you ſay they are Declarations in Parliament? Then the Chancellor, or the Keeper's Speech, or the Lord Privy Seal's, muſt be a Declaration in Parliament. Whoever ſpeaks the Senſe of the King, if he does not ſpeak that which is Law and Right, is queſtionable for it: And ſeveral have been impeached for ſo doing; for they look not upon it as the King's Speech, except it be according to Law: Nothing can turn upon the Prince but what is Legal: If it be otherwiſe, it turns upon him that ſpeaks it. I never did hear that a Speech made by the Chancellor (and I will appeal to all the Lords that hear me in it) was a Declaration in Parliament.

Then, my Lord, we come to the Buſineſs in 1672, which with that in 1662, and that in *Breda*, ſhews that this of the King's is not ſuch a Novelty, but has been done often before. In 1672, the King was in Diſtreſs for Money, being intangled in a *Dutch* War, and wanted Supply: He capitulates with his Commons, you have heard it read; and, upon the Commons Addreſs, he aſſerts it to be his Right, and makes his Complaint to the Lords how the Commons had uſed him; for, when he gives them a fair Anſwer, they reply, and there are Conferences with the Lords about it; but at length it all ends in a Speech by the King, who comes and tells them of his preſent Neceſſities, and ſo he was minded to remit a little at the Inſtigation of the Commons; and he has a good Lump of Money for it. Would this amount to a Declaration in Parliament? Can my Lords the Biſhops fancy or imagine, that this is to be impoſed upon the King, or upon the Court, for a Declaration in Parliament?

Then, laſt of all, for that in 1685, in this King's Time, What is it? The Commons make an Addreſs to the King, and complain to his Majeſty of ſome of his Officers in his Army, that might pretend to have a Diſpenſation, ſomething of that Nature, contrary to the Teſt Act: And what is done upon it? They make their Application to the King, and the King anſwers them; and that is all. But ſince it is ſpoken of in the Court, I would take Notice, That it is very well known by the Caſe of *Godwin* and *Hales*, the Judgment of this Court was againſt the Opinion of that Addreſs.

But what Sort of Evidence is all this? Would you allow all the Addreſſes of the Houſe of Commons to be Evidence? Give me Leave to ſay it, my Lord, If you ſuffer theſe Votes, theſe Copies of imperfect Bills, theſe Addreſſes and Applications of one or both Houſes to the King, to be Evidence and Declarations in Parliament, then what will become of the Bill of Excluſion? Shall any body mention that Bill of Excluſion to be a Declaration in Parliament? If ſo, then there is Declaration againſt Declaration; the Declarations of the Commons againſt the Declaration of the Lords. I know not what Judgment my Lords the Biſhops may be of now, concerning thoſe Things of Votes and Addreſſes being Declarations in Parliament, but I am ſure they have ſpoken againſt it heretofore; nay, I am ſure ſome of them have preached againſt it.

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And if my Lords the Biſhops have ſaid, Theſe are Declarations in Parliament, and they are not Declarations in Parliament; and if they accuſe the King of having done an illegal Thing, becauſe he has done that which has been declared in Parliament to be illegal, when it was never ſo declared, then the Conſequence is very plain, that they are miſtaken ſometimes; and I ſuppoſe by this Time they believe it.

I dare ſay, it will not be denied me, That the King may, by his Prerogative Royal, iſſue forth his Proclamation: It is as eſſential a Prerogative, as it is to give his Aſſent to an Act of Parliament to make it a Law. And it is another Principle, which I think cannot be denied, That the King may make Conſtitutions and Orders in Matters Eccleſiaſtical; and that theſe he may make out of Parliament, and without the Parliament. If the King may do ſo, and theſe are his Prerogatives, then ſuppoſe the King does iſſue forth his Royal Proclamation (and ſuch in effect is this Declaration under the Great Seal) in a Matter Eccleſiaſtical, by Virtue of his Prerogative Royal, and this Declaration is read in the Council and publiſhed to the World; and then the Biſhops come and tell the King, Sir, You have iſſued out an illegal Declaration, being contrary to what has been declared in Parliament, when there is no Declaration in Parliament: Is not this a diminiſhing the King's Power and Prerogative, in iſſuing forth his Declaration, and making Conſtitutions in Matters Eccleſiaſtical? Is not this a queſtioning of his Prerogative? Do not my Lords the Biſhops, in this Caſe, raiſe a Queſtion between the King and the People? Do not they (as much as in them lies) ſtir up the People to Sedition? For who ſhall be Judge between the King and the Biſhops? Says the King, I have ſuch a Power and Prerogative to iſſue forth my Royal Proclamation, and to make Orders and Conſtitutions in Matters Eccleſiaſtical, and that without the Parliament, and out of Parliament. Say my Lords the Biſhops, You have done ſo, but you have no Warrant for it. Says the King, Every Prince hath done it; and I have done no more than what is my Prerogative to do: But this, ſay the Biſhops, is againſt Law. How ſhall this be tried? Should not the Biſhops have had the Patience to have waited till a Parliament came? When the King himſelf tells them, He would have a Parliament in *November* at the furtheſt.

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L. C. J. Pray, Mr. *Sollicitor*, come close to the Business, for it is very late.

Mr. *Sol. Gen.* My Lord, I beg your Patience: You have had a great deal of Patience with them: Pray spare me a little, I am saying, when the King himself tells them that He would have a Parliament in *November* at furthest, yet they have no Patience to stay till *November*, but make this Application to him: Is not this raising a Question upon the King's Prerogative in issuing forth Declarations? and upon the King's Power and Right in Matters Ecclesiastical? And when I have said this, that my Lords the Bishops have so done; If they have raised a Question upon the Right of the King, and the Power of the King in Matters Ecclesiastical, then they have stirred up Sedition. That they have so done, is pretty plain; and for the Consequence of it, I shall appeal to the Case in the 2 *Cro.* 2 *Jac* I. That it is a plain direct Authority for me.

Mr. *Just. Powel.* Nay, Mr. *Sollicitor*, we all very well know, to deny the King's Authority in Temporals and Spirituals, as by Act of Parliament, is High-Treason.

Mr. *Sol. Gen.* I carry it not so far, Sir: We have a gracious Prince; and my Lords the Bishops find it so by this Prosecution. But what says that Case? It is printed in three Books, in *Noy* 100, in *Moor* 375, and in Mr. *Just. Cro.* 371, says that Case, The King may make Orders and Constitutions in Matters Ecclesiastical.

Mr. *Just. Powel.* But how will you apply that Case to this in Hand, Mr. *Sollicitor?*

Mr. *Sol. Gen.* I will apply it by and by, Sir. I would first shew what it is: There is a Convention of the greatest Men in the Kingdom-----

Mr. *Just. Powel.* Indeed, Mr. *Sollicitor*, you shoot at Rovers.

Mr. *Sol. Gen.* There is the Lord Privy Seal, the Archbishop of *Canterbury*, and a great many others: It is the greatest Assembly we meet with in our Books; and all of them are of this Opinion, That the King may make Orders and Constitutions in Matters Ecclesiastical.

My Lord, there is another Authority, and that is, from the Statute 1 *Eliz.* which erected the High Commission Court; and that Statute was not Introductory of a new Law, but Declaratory of the old Law. The King, by his Proclamation, declares his Sense to do such and such a Thing; the Court, and all Persons there, give their Judgment and Opinion upon that Statute, That they looked upon it as the grossest Thing, and the foulest Affront to the Prince, for any Man to bring into Question that Power of the King in Matters Ecclesiastical; 'tis said to be a very high Crime. Why then, my Lord, what is done in this Case?

Mr. *Just. Powel.* Mr. *Sollicitor*, Pray, when you are applying, apply that other Part of the Case too, which says, it was a heinous Offence, to raise a Rumour that the King did intend to grant a general Toleration: And is there any Law since that has changed it, Mr. *Sollicitor?*

Mr. *Sol. Gen.* In the main, Judgment goes another Way: As for that Part, it was personal to the Prince that then was, of whom they had scandalously reported, that he intended to do such a Thing. They looked upon it as a Scandal to King *James*; that it was a sowing Sedition, and stirring up People against the Government; and that will come up to our Case: For as some Men do it on the right Side, others do it on the left: And whoever he be that endeavours to bring a Dislike of the King in the People, that is moving Sedition against the Prince; but that is personal to the Prince himself, and does not go to his Successors. 1688. 4 Jac. II.

Now, my Lord, I come to that which is very plain, from the Case of *De Libellis Famosis:* If any Person, in any Paper, have slandered the Government, You are not to examine who is in the Right; and who is in the Wrong; whether what they said to be done by the Government be Legal or no; but whether the Party have done such an Act. If the King have a Power (for still I keep to that) to issue forth Proclamations to his Subjects, and to make Orders and Constitutions in Matters Ecclesiastical; if he does issue forth his Proclamation, and make an Order upon the Matters within his Power and Prerogative; and if any one would come and bring that Power in Question, I say that is Sedition; and you are not to examine the Legality, or Illegality of the Order or Proclamation: And that I think is very plain upon that Case, in the 5th Report; for it says, If a Person does any Thing that is Libellous, you shall not examine the Fact, but the Consequence; whether it tended to stir up Sedition against the Publick, or to stir up Strife between Man and Man. In the Case of private Persons, as if a Man should say of a Judge, He has taken a Bribe, and I will prove it: This is not to be sent in a Letter; but they must take a regular Way to prosecute it according to Law.

If it be so in the Case of an inferior Magistrate, what must it be in the Case of the King? To come to the King's Face, and tell him (as they do here) that he has acted illegally, doth certainly, sufficiently prove the Matter to be Libellous. What do they say to the King? They say and admit, that they have an Averseness for the Declaration; and they tell him from whence that Averseness doth proceed: And yet they insinuate, that they had an Inclination to gratify the King, and embrace the Dissenters, that were as averse to them as could be, with due Tenderness, when it should be settled by Parliament and Convocation. Pray, what hath their Convocation to do in this Matter?

Lord Chief Justice. Mr. *Sollicitor General*, I will not interrupt you; but, pray, come to the Business before us: Shew us that this is in Diminution of the King's Prerogative; or that the King ever had such a Prerogative.

Mr. *Sol. Gen.* I will, my Lord, I am observing what it is they say in this Petition---- They tell the King, It is inconsistent with their Honour, Prudence, and Conscience, to do what he would have them to do; and if these Things are not reflective upon the King

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Mr. *Sol. Gen.* In the main, Judgment goes another Way: As for that Part, it was personal to the Prince that then was, of whom they had scandalously reported, that he intended to do such a Thing. They looked upon it as a Scandal to King *James*; that it was a sowing Sedition, and stirring up People against the Government; and that will come up to our Case: For as some Men do it on the right Side, others do it on the left: And whoever he be that endeavours to bring a Dislike of the King in the People, that is moving Sedition against the Prince; but that is personal to the Prince himself, and does not go to his Successors.

Now, my Lord, I come to that which is very plain, from the Case of *De Libellis Famosis:* If any Person, in any Paper, have slandered the Government, You are not to examine who is in the Right; and who is in the Wrong; whether what they said to be done by the Government be Legal or no; but whether the Party have done such an Act. If the King have a Power (for still I keep to that) to issue forth Proclamations to his Subjects, and to make Orders and Constitutions in Matters Ecclesiastical; if he does issue forth his Proclamation, and make an Order upon the Matters within his Power and Prerogative; and if any one would come and bring that Power in Question, I say that is Sedition; and you are not to examine the Legality, or Illegality of the Order or Proclamation: And that I think is very plain upon that Case, in the 5th Report; for it says, If a Person does any Thing that is Libellous, you shall not examine the Fact, but the Consequence; whether it tended to stir up Sedition against the Publick, or to stir up Strife between Man and Man. In the Case of private Persons, as if a Man should say of a Judge, He has taken a Bribe, and I will prove it: This is not to be sent in a Letter; but they must take a regular Way to prosecute it according to Law.

If it be so in the Case of an inferior Magistrate, what must it be in the Case of the King? To come to the King's Face, and tell him (as they do here) that he has acted illegally, doth certainly, sufficiently prove the Matter to be Libellous. What do they say to the King? They say and admit, that they have an Averseness for the Declaration; and they tell him from whence that Averseness doth proceed: And yet they insinuate, that they had an Inclination to gratify the King, and embrace the Dissenters, that were as averse to them as could be, with due Tenderness, when it should be settled by Parliament and Convocation. Pray, what hath their Convocation to do in this Matter?

Lord Chief Justice. Mr. *Sollicitor General*, I will not interrupt you; but, pray, come to the Business before us: Shew us that this is in Diminution of the King's Prerogative; or that the King ever had such a Prerogative.

Mr. *Sol. Gen.* I will, my Lord, I am observing what it is they say in this Petition---- They tell the King, It is inconsistent with their Honour, Prudence, and Conscience, to do what he would have them to do; and if these Things are not reflective upon the King

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and Government, I know not what is: This is not in a Way of Judicature: Poſſibly it might have been allowable to petition the King to put it into a Courſe of Juſtice, whereby it may be tried; but alas! there is no ſuch Thing in this Matter. It is not their Deſire to put it into any Method of Trial; and ſo it comes in the Caſe *De Libellis Famoſis*; for by this Way, they make themſelves Judges, which no Man by Law is permitted to do. My Lords the Biſhops have gone out of the Way; and all that they have offered does not come home to juſtify them; and therefore I take it, under Favour, that we have made it a good Caſe for the King: We have proved what they have done; and whether this be warrantable or not is the Queſtion, Gentlemen, that you are to try. The whole Caſe appears upon Record; the Declaration and Petition are ſet forth, and the Order of the King and Council. When the Verdict is brought in, they may move any Thing what they pleaſe in Arreſt of Judgment: They have had a great deal of Latitude, and taken a great deal of Liberty: But truly, I apprehend, not ſo very pertinently. But I hope we have made a good Caſe of it for the King, and that You, Gentlemen, will give us a Verdict.

Mr. *Juſt. Holloway.* Mr. *Sollicitor*, there is one Thing I would feign be ſatisfied in: You ſay the Biſhops have no Power to petition the King.

Mr. *Sol. Gen.* Not out of Parliament, Sir.

Mr. *Juſt. Holloway.* Pray give me Leave, Sir. Then the King having made ſuch a Declaration of a general Toleration and Liberty of Conſcience; and afterwards he comes and requires the Biſhops to diſperſe this Declaration: This they ſay, out of a Tenderneſs of Conſcience, they cannot do, becauſe they apprehend it contrary to Law, and contrary to their Function. What can they do, if they may not Petition?

Mr. *Sol. Gen.* I'll tell you what they ſhould have done, Sir. If they were commanded to do any Thing againſt their Conſciences, they ſhould have acquieſced till the meeting of the Parliament.

[*At which ſome People in the Court hiſſed.*]

Mr. *Att. Gen.* This is very fine, indeed: I hope the Court and the Jury will take Notice of this Carriage.

Mr. *Sol. Gen.* My Lord, it is one Thing for a Man to ſubmit to his Prince, if the King lay a Command upon him that he cannot obey, and another Thing to affront him. If the King will impoſe upon a Man what he cannot do, he muſt acquieſce: But ſhall he come and fly in the Face of his Prince? Shall he ſay it is illegal? and that the Prince acts againſt Prudence, Honour, or Conſcience; and throw Dirt in the King's Face? Sure that is not to be permitted; that is Libelling with a Witneſs.

L. C. J. Truly, Mr. *Sollicitor*, I am of Opinion, that the Biſhops might petition the King; but this is not the right Way of bringing it: I am not of that Mind, that they cannot petition the King out of Parliament; but if they may petition, yet they ought to have done it after another Manner; for if they may in this reflective Way petition the King, I am ſure it will make the Government very precarious.

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Mr. *Juſt. Powel.* Mr. *Sollicitor*, it would have been too late to ſtay for a Parliament; for it was to have been diſtributed by ſuch a Time.

Mr. *Sol. Gen.* They might have lain under it, and ſubmitted.

Mr. *Juſt. Powel.* No, they would have run into Contempt of the King's Command, without petitioning the King not to inſiſt upon it: And if they had petitioned, and not have ſhewn the Reaſon why they could not obey, it would have been looked upon as a piece of Sullenneſs; and that they would have been blamed for, as much on the other Side.

The Chief Juſtice directs the Jury.

L. C. J. I do aſſure you, if it had not been a Caſe of great Concern, I would not have heard you ſo long: It is a Caſe of a very great Concern to the King and the Government on the one Side, and to my Lords the Biſhops on the other; and I have taken all the Care I can to obſerve what has been ſaid on both Sides. 'Tis not to be expected that I ſhould repeat all the Speeches, or the particular Facts; but I will put the Jury in mind of the moſt material Things, as well as my Memory will give me Leave: But I have been interrupted by ſo many long and learned Speeches, and by the Length of the Evidence which has been brought in, in a very broken, unmethodical Way, that I ſhall not be able to do ſo well as I would.

Gentlemen, thus ſtands the Caſe: It is an Information againſt my Lords the Biſhops, his Grace my Lord of *Canterbury*, and the other ſix Noble Lords; and it is for preferring, compoſing, making, and publiſhing, and cauſing to be publiſhed a Seditious Libel: The Way that the Information goes is ſpecial, and it ſets forth, That the King was graciouſly pleaſed, by his Royal Power and Prerogative, to ſet forth a Declaration of Indulgence for Liberty of Conſcience, in the third Year of his Reign; and afterwards, upon the 27th of *April*, in the fourth Year, he comes and makes another Declaration; and afterwards, in *May*, orders in Council, That this Declaration ſhould be publiſhed by my Lords the Biſhops in their ſeveral Dioceſes; and after this was done, my Lords the Biſhops come and preſent a Petition to the King, in which were contained the Words which you have ſeen.

Now, Gentlemen, the Proofs that have been upon this, you will ſee what they are; the two Declarations are proved by the Clerks of the Council, and they are brought here under the Great Seal: A Queſtion did ariſe, Whether the Prints were the ſame with the Original Declarations? and that is proved by *Hills*, or his Man, that they were examined, and are the ſame: Then the Order of Council was produced by Sir *John Nicholas*, and has likewiſe been read to you: Then they come to prove the Fact againſt the Biſhops, and firſt they fall to proving their Hands; they begun indeed a great Way off, and did not come ſo cloſe to it as they afterwards did; for ſome of their Hands they could

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could hardly prove, but my Lord Archbiſhop's Hand was only proved and ſome others; but there might have been ſome Queſtion about that Proof, but aftewards it came to be proved, That my Lords the Biſhops owned their Hands; which, if they had produced at firſt, would have made the Cauſe ſomething ſhorter than it was.

The next Queſtion that did ariſe, was about the Publiſhing of it, whether my Lords the Biſhops had publiſhed it? and it was inſiſted upon, That nobody could prove the Delivery of it to the King: It was proved the King gave it to the Council, and my Lords the Biſhops were called in; there they acknowledged their Hands, but nobody could prove how it came to the King's Hands: Upon which we were all of Opinion, that it was not ſuch a Publiſhing as was within the Information; and I was going to have directed you, to find my Lords the Biſhops Not Guilty; but it happened, that being interrupted by an honeſt, worthy learned Gentleman, the King's Counſel took the Advantage, and informing the Court that they had further Evidence for the King, we ſtaid till my Lord Preſident came, who told us how the Biſhops came to him to his Office at *Whitehall*, and after they had told him their Deſign, That they had a Mind to petition the King, they asked him the Method they were to take for it, and deſired him to help them to the Speech of the King: And he tells them he will acquaint the King with their Deſire, which he does; and the King giving Leave, he comes down, and tells the Biſhops, that they might go and ſpeak to the King when they would; and (ſays he) I have given Direction that the Door ſhall be opened for you as ſoon as you come: With that the two Biſhops went away, and ſaid, They would go and fetch their other Brethren; and ſo they did bring the other four, but my Lord Archbiſhop, was not there; and immediately when they came back, they went up into the Chamber, and there a Petition was delivered to the King. He cannot ſpeak to that particular Petition, becauſe he did not read it; and that is all he knew of the Matter, only it was all done the ſame Day, and that was before my Lords the Biſhops appeared in Council. Gentlemen, after this was proved, then the Defendants came to their Part, and theſe Gentlemen that were of Counſel for my Lords let themſelves into their Defence by notable learned Speeches, by telling you, That my Lords the Biſhops are Guardians to the Church, and great Peers of the Realm, and were bound in Conſcience to take Care of the Church: They have read you a Clauſe of a Statute made in Queen *Elizabeth*'s Time, by which they ſay, My Lords the Biſhops were under a Curſe, if they did not take care of that Law. Then they ſhew you ſome Records; one in *Richard* the Second's Time, which they could make little of, by reaſon their Witneſſes could not read it; but it was, in ſhort, a Liberty given to the King to diſpenſe with the Statute of Proviſors. Then they ſhew you ſome Journals of Parliament, firſt in the Year 1662, where the King had granted an Indulgence; and the Houſe of Commons declared it was not fit to be done, unleſs it were by Act of Parliament: And they read the King's Speech, wherein he ſays, He wiſhed he had ſuch a Power; and ſo likewiſe in 1672, which is all nothing but Addreſſes and Votes, or Orders of the Houſe, or Diſcourſes, either the King's Speech, or the Subjects Addreſſes; but theſe are not Declarations in Parliament, that is inſiſted upon by the Counſel for the King, That what is a Declaration in Parliament, is a Law, and that muſt be by the King, Lords and Commons; the other is but common Diſcourſe, but a vote of the Houſe, or a Signification of their Opinion; and cannot be ſaid to be a Declaration in Parliament. Then they come to that in 1685; where the Commons take Notice of ſomething about the Soldiers in the Army, that had not taken the Teſt, and make an Addreſs to the King about it; but in all theſe Things (as far as I can obſerve) nothing can be gathered out of them one way or other; it is all nothing but Diſcourſes. Sometimes this Diſpenſing Power has been allowed, as in *Richard* the Second's Time; and ſometimes it has been denied, and the King did once wave it; Mr. Sollicitor tells you the Reaſon, There was a Lump of Money in the Caſe: But I wonder indeed to hear it come from him.

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Mr. Sol: Gen. My Lord, I never gave my Vote for Money, I aſſure you.

L. C. J. But thoſe Conceſſions which the King ſometimes makes for the Good of the People, and ſometimes for the Profit of the Prince himſelf, (but I would not be thought to diſtinguiſh between the Profit of the Prince and the Good of the People, for they are both one; and what is the Profit of the Prince is always for the Good of the People;) but I ſay, thoſe Conceſſions muſt not be made Law, for that is reſerved in the King's Breaſt to do what he pleaſes in it at any Time. The Truth of it is, the Diſpenſing Power is out of the Caſe, it is only a Word uſed in the Petition; but truly I will not take upon me to give my Opinion in the Queſtion, to determine that now, for it is not before me; the only Queſtion before me is, and ſo it is before you, Gentlemen, it being a Queſtion of Fact Whether here be a certain Proof of a Publication? and then the next Queſtion is a Queſtion of Law indeed, Whether, if there be a Publication proved, it be a Libel?

Gentlemen, upon the Point of the Publication I have ſummed up all the Evidence to you and if you believe, that the Petition which theſe Lords preſented to the King, was this Petition; truly, I think, that is a Publication ſufficient; if you do not believe it was this Petition, then my Lords the Biſhops are not guilty of what is laid to their Charge in this Information, and conſequently there needs no Enquiry, whether they are guilty of a Libel: But if you do believe that this was the Petition they preſented to the King, then we muſt come to enquire, Whether this be a Libel.

Now, Gentlemen, any thing that ſhall diſturb the Government, or make Miſchief, and a Stir among the People, is certainly within the Caſe of *Libellis Famoſis*; and I muſt in ſhort

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ſhort give you my Opinion, I do take it to be a Libel. Now, this being a Point of Law, if my Brothers have any thing to ſay to it, I ſuppoſe they will deliver their Opinions.

Judge Holloway's *Opinion.*

Then Mr. Juſtice *Holloway* delivered his Opinion, and ſaid: As it was the Right of every Subject to petition, it could not be a Fault, unleſs it were done with an ill Intent: Indeed if the Jury were ſatisfied it was done with an ill Intention, as to raiſe Sedition or the like, they ought to find them guilty: But if they did deliver the Petition to ſave themſelves harmleſs, and to free themſelves from blame, by ſhewing the Reaſon of their Diſobedience to the King's Command, which they apprehended to be a Grievance to them, and which they could not in Conſcience give Obedience to, he could not think it was a Libel.

Judge Powel's *Opinion.*

Mr. Juſtice *Powel* alſo obſerved, That to make it a Libel, it muſt be falſe and malicious, and tend to Sedition; and he ſaw nothing offered by the King's Counſel to ſhew either the Falſhood or the Malice of it: Nor did he remember any Caſe in Law, and he had taken ſome Pains upon this Occaſion to look into it, that there was any ſuch Diſpenſing Power in the King, and then it could be no Libel: That this was a Diſpenſation with a Witneſs, which amounted to an Abrogation and utter repeal of all Laws: And he could ſee no difference in Law between the King's Power to diſpenſe with Laws Eccleſiaſtical, and his Power to diſpenſe with any other Laws whatſoever: That if this were once allowed, they ſhould have no need of Parliaments; all the Legiſlature would be in the King, which was a Thing worth conſidering, and he left the Iſſue to God and their Conſciences.

Judge Allybone's *Opinion.*

Mr. Juſtice *Allybone* on the other hand ſaid, that he laid it down as a Rule, That no Man could take upon him to write againſt the Actual Exerciſe of the Government, unleſs he had Leave from the Government; if he did, it was a Libel. That no private Man might take upon him to write againſt the Government at all: When the Government came to ſhake his particular Intereſt, he might redreſs himſelf by Law; but if he intruded into other Men's Buſineſs, that did not concern his particular Intereſt, he was a Libeller.

He agreed, every Man might petition the King or Government in a Matter that related to his own private Intereſt: But to meddle with a Matter that related to the Government, he did not think the Biſhops had any more Power to do than others.

When the Houſe of Lords and Commons were ſitting, they had a proper way of applying to the King: But if every private Man was to interpoſe his Advice, there would be no End of adviſing the Government. And in the Reign of King *James* I. there was a ſolemn Reſolution, That it was a High Miſdemeanor, and next to Treaſon, to petition the King to put the Penal Laws in Execution.

Mr. *Pollexfen*. The Puritans threatened there, unleſs their Requeſt was granted, ſeveral Thouſands of the King's Subjects would be diſcontented.

Mr. Juſtice *Powel*. That was the Reaſon of that Judgment.

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Mr. Juſtice *Allybone* ſaid, He laid no great Streſs on that Objection, That the Matter of that Petition was not falſe; and for Sedition, that was what every Libel carried in it ſelf: As every Treſpaſs implied *Vi & Armis*, ſo every Libel againſt the Government carried in it Sedition, and all the other Epithets that were in the Information. This was his Opinion as to the Law in general, and he ſhould not debate the Prerogative of the King, or the Privilege of the Subject; but as the Fact was, he thought theſe venerable Biſhops did meddle with that which did not belong to them: They took upon them in a Petitionary Way to contradict the actual Exerciſe of the Government, which he thought no particular Perſons might do.

The Jury had leave to ſend for Wine, and deſiring they might have the Papers out with them, which had been given in Evidence, the Chief Juſtice ſaid, They might have a Copy of the Information, the Libel, and the Declaration under Seal, but not the Votes of the Houſe of Commons, or the Journals; for they could have no Paper that was not under Seal.

The Jury then withdrawing, remained together all Night, without Fire or Candle: And the Court ſitting again next Morning (being *Saturday* the 30th of *June*) the Biſhops came into Court, and the Jury brought in their Verdict, that the Defendants were NOT GUILTY.

The Biſhops acquitted.

At which the People ſhouting, Mr. *Sollicitor* moved they might be committed; and a Gentleman of *Grays-Inn* was apprehended, to whom the Chief Juſtice ſaid, I am as glad, Sir, as you can be, that my Lords the Biſhops are acquitted; but your Manner of rejoicing in Court is indecent: However he was ſoon after diſcharged.

Then the Court aroſe, and my Lords the Biſhops were permitted to return Home, the Attorney General informing the Court he had nothing more againſt them.

The Victory King *James*'s Forces obtained over the Duke of *Monmouth* at *Sedgmore*, in the Year 1685, was the Ruin of that Prince. The King looked upon himſelf to be ſo well eſtabliſhed by that ſucceſsful Battel, that he was no longer under a Neceſſity of concealing his Paſſion for Popery; or indeed of keeping his Word, which he had ſo ſolemnly given at his Acceſſion, to protect and maintain the Church of *England*, and the Civil Conſtitution.

He told the Parliament, at their Meeting the following Winter, that he both had, and would employ Popiſh Officers: And when that dutiful Houſe of Commons addreſſed him, and offered to indemnify the Popiſh Officers for what paſſed; but deſired he would not continue any Recuſants in Office; he imperiouſly anſwered, *He did not expect ſuch an addreſs from the Houſe of Commons*, and prorogued them a few Days afterwards, though they were then upon a Bill for raiſing his Majeſty 700,000 Pounds: Nor did he ever ſuffer them to meet afterwards; but increaſing his ſtanding Forces, diſplacing ſeveral Proteſtant Officers, and employing *Iriſh* Popiſh Officers to command them in their ſtead plainly

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ly discovered his Intentions of introducing his Religion by Force, without any Regard to the Laws and Statutes of the Realm: This was further manifested by his Majesty's assuming a Dispensing Power, which in Effect repealed and abrogated all our Laws at once. And when Sir *Thomas Jones* Lord Chief Justice of the *Common Pleas*, the Lord Chief Baron *Mountague*, Sir *Job Charlton* one of the Judges of the *Common Pleas*, and Sir *Edward Nevil*, one of the Barons of the *Exchequer*, declared, (their Opinions being demanded) That the King could not dispense with the Laws, either in Favour of the Papists or Dissenters, they were displaced, and more complying Lawyers advanced to those Posts: One of them, *Christopher Milton*, who was made a Baron of the *Exchequer*, being a professed *Roman Catholick*, as was also *Richard Allybone*, who was not long after preferred to be one of the Judges of the *King's-Bench*; and several Popish Lords were called to the Council-Table, particularly the Lords *Powis*, *Arundell*, *Bellasis*, and *Dover*.

And we find it was soon after resolved, in the Case of *Godwin* and *Hales* above-mentioned, *That the King might dispense with the penal Laws in Cases of Necessity*; *and that the King was Judge of that Necessity*.

Whereupon the Papists were allowed the free and open Exercise of their Religion; Schools and Seminaries of Jesuits, and other Orders, were erected; four Popish Bishops were consecrated in the Royal Chapel, and sent to exercise Episcopal Jurisdiction in several Parts of *England*: Their Pastoral Letters directed to the *English* Catholicks, were printed by the King's Printer, and dispersed all over *England*; Monks and Friers of all Orders appeared in their proper Habits; and, lest the Clergy of the Church of *England* should preach against Popery, his Majesty's Letters were directed to all Protestant Bishops, Requiring them to prohibit their inferior Clergy to meddle with any controverted Points of Religion: And, by what followed soon after, it was manifest, the principal Motive for this Injunction was, That they might not preach against Popery. However, the Divines of the Church of *England* never exerted their Talent more vigorously or successfully, in preaching and writing against all the Absurdities of Popery, than at this Time; while the Dissenting Teachers, of every Denomination, remained silent, or rather flattered and encouraged this unfortunate Prince in his Projects of dispensing with the Laws, and breaking down those Boundaries, which had hitherto so happily defended and protected the Protestant Religion, and the Liberties and Properties of the People.

The Church of *England*, therefore, now became the principal Object of the King's Aversion, and the Butt against which the Popish Ministers levelled their whole Artillery; and the Court not being able to change and new model the Bench of Bishops, as they had done the Lay Judges, a Kind of High Commission Court was erected entitled, *The Commission for Causes Ecclesiastical*, on which an unlimited and absolute Power was conferred over all Causes and Persons Ecclesiastical; and, for Form-sake, Dr. *Sancroft*, Archbishop of *Canterbury*, was made the first Commissioner; but he refused to act: And some other Bishops were made Members of this Court, particularly the Bishops of *Rochester* and *Durham*; but these at length withdrew, as did also some of the Lay Commissioners. The Lord Chancellor *Jeffries*, and the Earl of *Sunderland*, President of the Council, were the principal Men the King depended on, to bring the Church of *England* under the Subjection of the See of *Rome*; or, rather to establish Popery in the Room of the Church of *England*: Not that these Noblemen were really Papists; they seemed indifferent to all Religions, but could profess any to advance their Fortunes, and make their Court to the Powers in Being.

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This Commission was generally held to be illegal; for the Statute of 17 *Car.* I. which abolished the High Commission Court, had enacted, That no Court should be erected with the like Power or Jurisdiction for the future, and the Statute of 13 *Car.* II. which confirmed the ordinary Power of Archbishops and Bishops, rectified that Clause in the 17th of *Car.* I. for abolishing the High Commission Court, and all Courts of the like Nature: However, the King having obtained the Opinions of some of the Judges, that he had Power to erect such a Court, the Bishops of *Rochester* and *Durham*, the Lord *Mulgrave*, and some others, submitted to act by virtue of this Commission, for some Time; more out of Fear to offend the King, than upon Choice.

Not long before the opening of this Commission, Dr. *Sharp*, Rector of St. *Giles's in the Fields*, (afterwards Archbishop of *York*) had preached a Sermon against Popery; at which the King was highly offended, and wrote to Dr. *Compton*, Bishop of *London*, to suspend him; which the Bishop neglecting, it occasioned the Prosecution of that Right Reverend Prelate above-mentioned, that ended in his own Suspension by the said Ecclesiastical Commissioners, whose Jurisdiction that Prelate bravely contested, as contrary to the said Statutes of 17 *Car.* I. and 13 *Car.* II.

The Bishops of *Durham*, *Rochester*, and *Peterborough*, were appointed by the Ecclesiastical Commissioners, to exercise Episcopal Authority in the Diocese of *London*, during the Bishop's Suspension; which was not taken off till the Rumour of the Prince of *Orange*'s intended Invasion.

The next that fell under the Weight of the King's Displeasure, was, the University of *Cambridge*: His Majesty had found Means to get one *Basset*, a *Roman-Catholick*, chosen Master of *Sidney-College*: and, in the Year 1687, sent his Letter Mandatory to that University, to admit *Alban Francis*, a Benedictine Monk, to the Degree of Master of Arts, without administring to him the usual Oaths: And when the University of *Cambridge* petitioned in the humblest Manner, to be excused from doing that illegal Act, which was so contrary to their Statutes and their Oaths; we find the King made use of the same illegal Ecclesiastical Commission to punish them for it, and displace the Vice-Chancellor; and the University too much countenanced that Authority, by electing ano-

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ther Vice-Chancellor, before Dr. *Peachell* was legally diſplaced: However, they deſerve great Applauſe, in perſiſting to refuſe Father *Francis* his Degree, when they ſaw the King in the Height of his Power, and ſupported by a ſtanding Army: May the Univerſity ever be governed by Men of Equal Courage and Zeal for their Religion!

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Some of them propoſed the ſame or the like Expedients, for ſecuring the Conſtitution, at the Meeting of the Parliament, as had been offered when the Bill of Excluſion was upon the Anvil; particularly, that all the great Officers, Miniſters, Judges, and Magiſtrates ſhould be nominated by the Parliament for the future.

Others had actually invited over the Prince and Princeſs of *Orange*, propoſing, that the Government ſhould be adminiſtered by that Princeſs, the next Proteſtant Heir to the Crown, during the Life of her Father, and that he ſhould retain little more than the Title and Revenue of a King: And this, poſſibly, was as much as the Prince of *Orange* himſelf expected at that Time.

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But there was ſtill a third Claſs, conſiſting of Diſſenters and Republicans, that were for altering the Conſtitution entirely, to that of a Commonwealth, like that of *Holland*; and if they had not Strength to carry that Point, they propoſed to depoſe King *James*, and ſet the Prince of *Orange*, alone, upon the Throne, under ſuch Limitations and Reſtrictions, as he ſhould have little more than the Name of King. But the Expectations of none of theſe were exactly anſwered; for, after a terrible Concuſſion, the Government ſettled almoſt on the ſame Baſis it had ſtood for many Years before. I ſhall conclude theſe Remarks with this further Obſervation; That all Parties, except the Papiſts, at the Revolution, agreed, the King ought to be reſtrained in the Exerciſe of his Power, though they did not agree in the Manner of reſtraining him.

1688. 4 Jac. II.

Walter's *Trial.*

The Trial of ROWLAND WALTERS, DEARING BRADSHAW, and AMBROSE CAVE, Gents. for *Murder*, at the *Old-Baily*, *London*, on the 1ſt of *June*, 1688. 4 *Jac.* II.

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The Caſe.

THIS is no State Matter, only an ordinary Trial for Murder, and that very imperfect; however, it appears that ſome Gentlemen got drunk at the *Swan* Tavern on *Fiſh-ſtreet-Hill*, and quarrelling at the Tavern Door, as they were going away, Sir *Charles Pym*, and Mr. *Walters* drew their Swords in the Street; Sir *Charles Pym* wounded Mr. *Walters* in the Thigh, and Mr. *Walters* run Sir *Charles* through the Body, who died upon the Spot; and the Court obſerving there was no premeditated Malice, the Gentlemen having never ſeen one another before, directed the Jury to find Mr. *Walters* guilty of Manſlaughter only; and the other two, being in the Houſe when Sir *Charles* was killed, were acquitted.

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Stansfield's *Trial.*

The Trial of PHILIP STANSFIELD, Gent. for *High-Treaſon* and *Parricide*, before the Earl of *Linlithgow*, Lord Juſtice General, and other Lords Commiſſioners, at *Endiburgh*, on the 6th of *February*, 1688. 4 *Jac.* II.

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The Indictment.

THE Indictment charges, that, Whereas, by the Laws of *Scotland*, the ſpeaking of malicious and ſeditious Words, to the Diſdain of his Majeſty's Perſon, and Contempt of his Royal Government; ſuch as drinking or wiſhing Confuſion to his Majeſty, is High-Treaſon; and the Curſing, Beating, Invading or Aſſaſſinating a Parent, is puniſhable with Death; the ſaid *Philip Stansfield*, nevertheleſs, ſhaking off the Fear of God, *&c.* did, in the Months of *June*, *July*, *Auguſt*, or *September* laſt, in the Kitchin of *New-Milns*, as a moſt villainous Traitor, begin a Health to the Confuſion of his Majeſty, his lawful Sovereign, and cauſed others to drink the ſame. The Indictment further charges,

That, notwithſtanding his Father had given him a liberal Education, he had taken ill Courſes; and been thrown into Priſon, in *Southwark*, and at *Antwerp*, *Orleans*, and other Places, from which his Father had releaſed him; and yet he fell to his debauched and villainous Courſes again. Whereupon his Father ſignifying his Intentions to diſinherit him, and ſettle his Eſtate on *John Stansfield*, his ſecond Son, the ſaid *Philip* did declare he would cut his Father's Throat, and particularly in the Months of *January*, *February*, or *March*, in the Year 1687. And in the Years 1683, 1684, and 1685, at *Bruſſels*, *Breda*, and other Places in *Holland* and *Flanders*, and in the Priſons of *London* and *Southwark*, he did moſt wickedly and unnaturally rail upon and curſe the ſaid Sir *James Stansfield*, his Parent, praying, the Devil might take him, the Devil rive him; declaring if he had a Sword, he would run it through him; and, if ever he came to *Scotland*, he would be revenged on him; and that his Mother recovering out of a Swoon, and ſaying, ſhe ſhould die ſhortly, he anſwered, By my Soul, my Father ſhall be dead before you.

That in the Months of *January*, *February*, *March*, or in ſome other Months in the Year 1680, 81, 82, 83, and 84, or one or other of them, he did attempt to aſſaſſinate his ſaid Father,

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Father, by purſuing him on the Highway, and firing Piſtols on him.

That in the Month of *November* laſt, the ſaid Sir *James Stansfield* coming from *Edinburgh* to his Houſe at *New-Milns*, and going into his Chamber to reſt, about Ten o' Clock at Night, and being alone in the Room, under the Credit, Truſt, and Aſſurance of the ſaid *Philip* his Son, and the Servants in the Family, the ſaid *Philip* did conſult with one *George Tomſon*, and divers other Perſons, how to murder him; and accordingly they did ſtrangle and murder him in his Bed-chamber; and, in the Dead of the Night, carried him from the ſaid Room, and threw him into a Water near the Houſe: That the next Morning, when the Body was found, the ſaid *Philip* cauſed him to be buried in haſte, and refuſed to ſtay till his Friends and Phyſicians viewed it: That the Body being taken up again by Authority, and inſpected by Surgeons, it appeared to have been ſtrangled, and not drowned: And that his neareſt Relations being required to lift the Corps into the Coffin, after it had been inſpected, upon the ſaid *Philip Stansfield*'s touching of it, it bled afreſh upon the ſaid *Philip*; and thereupon he let the Body fall, and fled from it, in the greateſt Conſternation, crying, *Lord have Mercy upon me!* For which Crimes he ought to be puniſhed, as the Laws of *Scotland* require, *&c.*

The Evidence for the King.

The Evidence for the Crown being called, *John Robertſon*, Servant to the deceaſed Sir *James Stansfield*, depoſed, That he ſaw the Priſoner, a little before Harveſt laſt, in the Kitchin at *New-Milns*, *(his Father Sir* James's *Seat)* drink Confuſion to the Pope, Antichriſt, the King and the Chancellor; and that he commanded him, (the Witneſs) to drink it on his Knees: That he anſwering, it was Treaſon, the Priſoner replied, Ye Dog, what are you concerned? you do not underſtand to whom you ſpeak.

He alſo teſtified, that he heard the Priſoner wiſh the Devil might take his Father (Sir *James)*; and when Sir *James* was going abroad, prayed the Devil would not let him, or any of his Company, come back; and at other Times had heard him ſay of his ſaid Father, *The Devil damn him, the Devil rive him*, &c. adding, that his Father girned upon him like a Sheep's Head in a Pair of Tongs. *Spoſſorth*, another of Sir *James*'s Servants, depoſed, that he heard the Priſoner drink Confuſion to the Pope, the King, *&c.* *Agnes Bruce* alſo teſtified, ſhe heard the Priſoner, in the Kitchin at *New-Milns*, drink Confuſion to the Pope and the King, and made the laſt Witneſs drink it upon his Knees: And this being talked of in the Family, a Week afterwards, he ſaid, God damn him, if he knew who divulged it, he would be their Death.

This Witneſs alſo teſtified, that ſhe had often heard the Priſoner vow and ſwear, he would kill any Perſon that offended him; and that he converſed much with *Janet Johnſton*, Wife of ---- *Johnſton*, with whom he had a criminal Amour; and with *George Tomſon*, and his Wife, *(all of them charged with the ſame Murder)*: That ſhe had often heard the Priſoner curſe his Father, and expreſs the utmoſt Abhorrence of him: That the Night before Sir *James*'s Death, ſhe thought he was not ſo merry as uſual: That when he came home on the *Saturday* Night, (when he was ſuppoſed to be murdered) he went to his Lady's Chamber, but did not ſtay a Quarter of an Hour there; his Lady quarelling with him for going to another Houſe before he came home.

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That this Witneſs, going the next Morning to light Sir *James*'s Fire, found the Bed in better Order than uſual, and Sir *James* gone; and deſiring the Body might be brought up to his Chamber, when it was found, the Priſoner, his Son, anſwered, it ſhould not enter there; for he had died more like a Beaſt than a Man, and cauſed it to be laid in a Cellar, where there was very little Light: That he took the Gold and Silver out of his Father's Pockets, and out of his Cabinet, and the very Buckles out of his Shoes, and put them in his own, within an Hour after his Father was found in the Water: That a little before this Accident, his Mother being ill, and ſaying, ſhe ſhould die, he anſwered, his Father ſhould be dead firſt.

John Shard, another of Sir *James*'s Servants, depoſed, that a little after the Priſoner's Marriage, he heard him complain, his Father gave him too ſhort an Allowance for a married Man; and ſaid, if his Father gave his Eſtate to his Brother *John*, he would cut his Throat, (he thought he meant his Father's Throat); and that the Night before he was found dead, he heard Sir *James* ſay in his Chamber, he had no Comfort in his Wife and Family.

Roderick Mackenzie, Advocate, depoſed, that about a Week before Sir *James*'s Death, obſerving him to be under ſome Concern, he asked him, what troubled him; and Sir *James* anſwered, he had no Satisfaction at home; that his Son was the greateſt Debauchee upon Earth; and what troubled him moſt was, he had twice attempted his Perſon.

Archibald Dunbar, Merchant, depoſed, that Sir *James* told him, his Son ſhot two Piſtols at him, as he was going to *Lothian-Burn*, and that if he had not been better mounted than his Son, he had killed him; and one ſaying, Sure there could not be Ball in the Piſtols, Sir *James* anſwered, he had too many Proofs of his Son's unnatural Behaviour: That Sir *James* durſt not go to Bed that Night, hearing a Shot or two made at the Door, and that this Witneſs ſat up with him all Night, and afterwards conducted him ſafely to *Edinburgh*.

Mr. *William Clarke*, Advocate, depoſed, that Sir *James* ordering him to draw a Settlement, to diſpoſe of his Eſtate to his younger Son *John*; and he (the Witneſs) ſaying his Son *Philip* might be reclaimed, Sir *James* anſwered, he had no Expectation of it; for when he was at the Lead Hills, there was a Piſtol ſhot at him, which, he was ſure, came from his Son *Philip*.

John Bell, a Miniſter, depoſed, that the Day before Sir *James* died, he accompanied him from *Edinburgh* to his Houſe at *New-Milns*; that both on the Way and at Supper,

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his Diſcourſe was rational and pertinent; that after Supper, Sir *James* went with him (the Witneſs) to his Chamber, and ſtaid with him till Ten o' Clock, and his Judgment ſeemed very ſound in what he ſaid.

That the Deponent waking in the Night, heard a great Din, a confuſed Noiſe of ſeveral Voices, and ſometimes heard Perſons walking, which affrighted him, and occaſioned his bolting the Chamber-Door faſter: That he ſtill heard Voices, but not ſo plain, till they came about to the Chamber-Window, and then he heard Voices as high as before; whereupon he roſe again, and endeavoured to look out at the Window, but could not open it; and that the Voices went on, towards the Garden and the Water, till he heard no more of them.

That about an Hour after Day, the Priſoner came to his (the Witneſs's) Chamber, and asked if Sir *James* had been there that Morning; ſaid he had been ſeeking him on the Bank of the Water, and immediately went down Stairs again: That he followed, to ſee what he meant, and one came running, and ſaid, they had found Sir *James* lying in the Water; which ſo aſtoniſhed him, (the Witneſs) that he returned trembling to his Chamber, and ſoon after took Horſe, but returned to *New-Milns* again in the Evening; and adviſed the Priſoner to have the Corps viewed by his Friends, and the Phyſicians; but he buried Sir *James* that Night without acquainting the Witneſs, or the honeſt Men of the Neighbourhood, with it.

The Evidence of the Surgeons.

James Murehead, Surgeon, depoſed, that upon the Priſoner's aſſiſting to lift the Body, after it had been ſewed up, and clean Linen put on, it darted out Blood through the Linen, from the Left-Side of the Neck, which the Priſoner touched; but that when he (the Witneſs), and the other Surgeon, put on the Linen, and ſtirred and moved the Head and Neck before, he ſaw no Blood at all. The ſaid *Murehead*, and the other Surgeon, *James Crawfurd*, depoſed further, that being ordered by Sir *John Dalrymple*, his Majeſty's Advocate, to view the Corps, they obſerved the Face to be a little ſwelled, *&c.* and upon their Report the Surgeons of *Edinburgh* gave their Opinions.

That whereas there was found a Swelling and preternatural Redneſs in the Face; a large conſpicuous Tumour, about three Inches broad, of a dark-red or black Colour, from one Side of the *Larinx*, round backwards to the other Side thereof; a large Swelling betwixt the Chin and the *Cartilago Scutiformis:* the Jugular Veins on both Sides very large and diſtended; and when Inciſion was made downwards, betwixt the *Os Hyoid* and *Larinx*, was obſerved a Laxneſs and Diſtance between the *Os Hyoid* and the *Cartilago Scutiformis:* Inciſion being made along the Tumour, it was found full of bruiſed Blood; the Jugulars likewiſe, when opened, yielding a conſiderable Quantity of Blood, eſpecially on the Left Side, no Smell or Corruption appearing in any Part of the Body: It was very probable theſe Parts had ſuffered ſome external Violence; which hath made them appear ſo far different from their natural Figure and Colour, and could not be cauſed by drowning ſimply: That the Breaſt and Belly being opened, and the Lungs diſtended, the *Bronchi* full of Air, without any Water, nor any Water found in the Stomach or Inteſtines; a Body, when drowned, being generally found to have much Water in it, with other Circumſtances of the Report conſidered, *gave juſt Ground to think he was not drowned.*

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The College of Phyſicians at *Edinburgh*, having, at the Deſire of his Majeſty's Advocate, conſidered the ſaid Report of the Surgeons, delivered their Opinions, *That there was ſufficient Grounds to believe the ſaid Sir* James Stansfield *was ſtrangled, and not drowned.*

Humphry Spurway being ſworn, depoſed, that waiting on Sir *James*, about ſix Weeks before his Death, and obſerving he was not ſo pleaſant as uſual, he enquired the Reaſon; Sir *James* ſighed, and wringing his Hands, while the Tears trickled down his Cheeks, he ſaid he had great Cauſe for it: He had borne his Burthen without complaining to others, but he had a very wicked Family; and it was very ſad, that a Man ſhould be deſtroyed by his own Bowels: Let him be never ſo ſparing at home and abroad, yet his Family at home conſumed him; and mentioned ſeveral large Sums they had expended beyond what he allowed them, which was very ſufficient: But what grieved him moſt was, that his youngeſt Son, whom he had ſome Hopes of, and whom he had ſettled his Eſtate upon, was debauched by his eldeſt Son, and came home ſeveral Times of late, as drunk as the other: That on the *Saturday* Night Sir *James* died, he (the Witneſs) was with him, and Mr. *Bell* the Miniſter, at the Houſe of one *Marr*, at *New-Milns*, and he ſuſpected Sir *James* had ſome Fears upon him, that he did not go firſt to his own Houſe, when he came from *Edinburgh:* That Sir *James* and the Miniſter afterwards went home; and the next Morning he (the Witneſs) hearing Sir *James* was miſſing, and meeting the Priſoner, who demanded what could be the Occaſion of this Man's Diſcontent, that he ſhould thus leave his Lodgings, he (the Witneſs) replied, do you wonder at his Diſcontent, that never gave him Content? Whereupon the Priſoner turned his Back upon him: That he, the Witneſs, then ſent out Sir *James*'s Servants, and his own, to look for him; and at length they found him in the River, a little Weſt of the Town; the Corps floating on the Water, about eight Feet from the River's Brink, lying on its Face, with only a Coat and Waiſtcoat looſe about it; the Bank of the River being beaten to maſh with Feet, and the Ground open and mellow, though it was a froſty Morning.

That early on *Monday* Morning, about Three o' Clock, he ſaw great Lights at the Gates of the Deceaſed; and, upon Enquiry, found they were carrying the Corps to be buried at *Morum*, pretending it was by the Lord Advocate's Order: However, on *Tueſday* Night, Mr. *Campbel*, and two other Gentlemen, and two Surgeons, called him (the Witneſs) out of his Bed, having an Order from the Lord Advocate to take up the Body; that he went with them, and they carried the Corps

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Corps into the Church, and found it in the Condition the Surgeons depoſed, (as above) and particularly, that the Corps bled on the Priſoner's touching of it.

James Mitchel, Nephew of the Deceaſed, depoſed, that about twenty Days before Sir *James*'s Death, he heard the Priſoner ſay, That if his Father diſpoſed of his Eſtate from him, he would kill him, though he died in the *Graſs-Market* for it.

James Dick depoſed, that he ſaw the Body taken out of the Water, and obſerved no Water came from it.

The King's Advocate deſired two Children might be examined, *viz. James Tomſon*, the Son of *George Tomſon*, being about thirteen Years of Age; and *Anne Johnſton*, the Daughter of *Janet Johnſton*, about ten Years of Age; but the Court refuſed it: However, at the Inſtance of the Jury, they were permitted to declare what they knew, without Oath.

The Evidence of two Children.

The Subſtance of what the Boy ſaid, was, that his Father and Mother aroſe that Night Sir *James* was murdered, and went out; and returning about two Hours after, he heard his Father ſay, the Deed was done, and that the Priſoner guarded the Door with a drawn Sword, and a bended Piſtol; that he never thought a Man would have died ſo ſoon; and that they carried him out to the Water-Side, and tied a Stone about his Neck; but they afterwards took away the Stone, and threw him into the Water; and that his Father ſaid he was afraid the Murder would come out; whereupon his Mother anſwered, Hout Fool! there is no fear of that; it will be thought he drowned himſelf.

The Girl depoſed, that the Night Sir *James* was killed, the Priſoner was at her Mother's Houſe (with whom the Priſoner had a criminal Converſation); that he ſent for *George Tomſon* and his Wife, (ſuppoſed to be concerned in the Murder); and that, after they went out, her Mother followed, and did not return till Two in the Morning; and her Father ſaid, Bitch, Whore! Where have you been ſo long? To which her Mother anſwered, Where-ever I have been, the Deed is done; and then went to Bed.

The Priſoner's Defence by Counſel.

The Priſoner's Advocates, or Counſel, ſaid in his Defence, That his drinking Confuſion to the King, was an improbable Calumny, he having, on all Occaſions, given Teſtimonies of his Loyalty, particularly at *Monmouth*'s Rebellion; when he entered himſelf a Volunteer in the Earl of *Dunbarton*'s Regiment, where he remained till the Rebels were defeated: That he could not conceive any Diſpleaſure againſt his Father, for ſettling his Eſtate on his ſecond Son, becauſe he did not know of it till after his Death.

As to the pretended Curſes and Imprecations, ſaid to be uttered againſt his Father, if he had been guilty of them, they were pardoned by the Act of Indemnity, in 1685: And as to his railing or curſing his Father, ſince, theſe if any, muſt be underſtood to be forgiven, becauſe his Father was reconciled to him, employed him ſince to receive his Rents, and ſtiled himſelf his loving Father in his Letters.

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As to the Statute which made Murder under Truſt to be Treaſon; the Father could not be ſaid to be under the Truſt of his Son, as a Traveller was under the Protection of his Hoſt at an Inn.

That the Circumſtances, from whence it was inferred he was guilty of his Father's Death, were very remote and uncertain; and as to his firing Piſtols in 1683 and 1684, it was not likely, becauſe there was an entire Friendſhip between his Father and him at that Time: However, thoſe Facts were pardoned, being before the Act of Indemnity; and for the bleeding of the Corps, it was a ſuperſtitious Obſervation, founded neither upon Law nor Reaſon: The bleeding was probably occaſioned by the moving of the Body, and the Inciſions of the Surgeons; and that other People touching the Body at the ſame Time, it could not be aſcribed to the Priſoner.

That in Capital Crimes, where the Charge was founded, as this was, upon Preſumptions, the Perſon ought not to be found guilty on remote and uncertain Conjectures; and beſides, thoſe Preſumptions were over-balanced by Preſumptions on the other Side: It was rather to be preſumed, Sir *James* threw himſelf into the Water, being ſubject to Melancholy, and had before attempted to throw himſelf out of a Window: And, if he was murdered, it could not be preſumed, the Priſoner ſhould break through all the Ties of Nature to do it, when there was an entire Friendſhip between them. Had he been conſcious of any Concern in it, he ſhould have fled, whereas he ſurrendered himſelf as ſoon as he heard he was ſuſpected; which alone was ſufficient to take of the Preſumptions urged againſt him.

The Argument of the King's Advocate contra.

His Majeſty's Advocate anſwered, The drinking or wiſhing Confuſion to his Majeſty, (which was not denied) was Treaſon: And that the Words were ſpoken deliberately or maliciouſly, appeared from their being repeated, and others forced to drink the ſame Healths; and he had a due Senſe of the Importance of the Words, by conjureing the Company to Secrecy, and threatning to brain them that ſhould diſcover it.

That the Crime of curſing Parents was not included in the General Act of Indemnity: And as to the Crime being forgiven by his Father, becauſe he ſeemed reconciled, they inſiſted, where the Publick was concerned, an expreſs Releaſe could not have diſpenſed with the Puniſhment.

And although it was ſaid, a Son's threatening to cut his Father's Throat was but a remote Circumſtance, and, it would not be concluded from thence, he actually murdered him; yet, it was ſuch a Circumſtance, that unleſs the Priſoner could ſhew another Perſon killed him, he muſt be reputed the Murderer.

As to the bleeding of the Corps, though ſeveral Perſons touched it, none of their Hands were ſtained with Blood but the Priſoner's: And the Body having lain two Days in the Grave, in a cold Seaſon the Blood muſt naturally have been congealed; and he muſt attribute it therefore to the Providence of God, that it fell a bleeding afreſh when the Priſoner touched it; and, that the horrible Impreſſions

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it made on him, was another Argument of his Guilt.

And, though it was urged, that a Capital Puniſhment cannot be inferred on bare Conjectures, but there ought to be clear and poſitive Teſtimonies; he anſwered, A Complication and Conjunction of ſo many Circumſtances, though none of them, *per ſe*, was ſufficient; yet all of them together induced a greater Certainty than two poſitive Witneſſes.

And whereas it was ſaid, It could not be preſumed, he was guilty of ſo unnatural a Crime; they anſwered, The Fact being ſo ſtrongly proved, this did but conclude the greater Guilt: That though Sir *James* had been melancholy and diſturbed in the Year 1679, he was known to be recovered, and ever ſince of a ſedate and compoſed Temper of Mind, and ſo capable of Buſineſs, as to be intruſted by the wiſeſt Men in the Kingdom: But, beſides, as it appeared he was ſtrangled, it could not be preſumed he walked out and drowned himſelf afterwards. As to the Priſoner's ſurrendring himſelf, it was agreeable to the reſt of his Impudence; and he might imagine, by that Action, to make the World believe he was innocent.

The Reply of the Priſoner's Counſel.

The Priſoner's Counſel replied, As to the Treaſonable Expreſſions, that it appeared the Priſoner was ſurpriſed into them, by his conjureing Perſons to Secrecy; and ſuch haſty Expreſſions were never laid hold on to infer a Capital Puniſhment, where the Party accuſed was not otherwiſe ſuſpected of Diſloyalty: They inſiſted ſtill upon the Act of Indemnity, by which all Murders and Robberies were expreſly pardoned; for, that a Pardon ought to be taken in the moſt ample and beneficial Senſe for the Subject; and the Priſoner having no viſible Fortune all that Time, did not come within the Exception in that Act.

They ſtill inſiſted alſo, that all Pretence of private Injury was taken away, by the offended Party's diſſembling it, and appearing reconciled; and the Act being intended in Favour of Parents, was never executed but at their Inſtance: As to the habitual Curſing and Swearing it was pardoned by the Act of Indemnity: and beſides, the particular Inſtances ought to have been charged in the Indictment, or the Priſoner could not be puniſhed for them.

As to the Teſtimony of the Miniſter, he appeared to be in ſuch Terror and Confuſion by his own Evidence, as rendred him incapable of obſerving or judging what happened: And as to the Body's floating, it might be occaſioned by a great Coat the deceaſed had on: As to there being no Water in the Body, when the Surgeons opened it, the Water might have run out before: And, although a Man who was unwillingly drowned, by endeavouring to breathe as long as he could, might ſuck in a great deal of Water; yet when a Man drowned himſelf, he might be ſuppoſed to hold his Breath for the quicker Diſpatch; and his holding his Breath might occaſion the Body to float, and prevent the Water coming in: That the great Collar thrown about the Neck of the Deceaſed, and by which he was pulled out, might occaſion the congealed Blood there; and the Ice remaining unbroken near the Bank where the Body lay (though very thin), made it apparent, the Deceaſed jumped in: And, as to the Opinions of the Phyſicians and Surgeons, they were founded on the Report of one or two Surgeons, on whoſe Skill or Ignorance that Matter depended: But whatever the Preſumptions were, that the Deceaſed was murdered, they could not affect the Priſoner, unleſs there was Evidence of his being concerned in it: That as to the bleeding of the Corps, he inſiſted on the Anſwers already given; but that the Priſoner ſhould appear ſurpriſed at the Sight of his Father's Blood, was to be aſcribed to natural Affection and filial Piety, rather than be made a Preſumption of his Guilt.

1688. 4 Jac. II.

Before the Jury withdrew, the Court gave them the following Directions, as to the Points of Law, *(viz.)*

Points of Law adjudged by the Court.

1. They declared, That drinking Confuſion to the King, was Treaſon.

2. That curſing his Father was puniſhable with Death: And,

3. That the Act of Indemnity would not avail the Priſoner, it not being deſigned to extend to thoſe of his Quality.

4. That as to his Father's Murder, Preſumptive Proof was ſufficient Legal Proof; but whether the Preſumptions were ſufficient, was left to the Jury, who thereupon withdrew.

The Priſoner convicted,

The Jury being returned, found the Priſoner guilty of all the Facts laid in the Indictment, *(viz.)* Of Treaſon, of curſing his Father, and of being concerned in his Murder.

and executed.

Whereupon Sentence of High-Treaſon was pronounced on him; and he was afterwards executed as a Traitor.

Remarks on Stansfield's Trial.

Thus we ſee the Lawyers of *Scotland* charge ſeveral Crimes of different Natures in one Indictment, as Treaſon, Murder, and the Curſing of a Father; which is never done in *England:* It is alſo obſervable, that the Curſing a Parent is Capital in *Scotland*; whereas in *England* there are too many young Fellows, who look upon an undutiful Behaviour to a Parent, and the reproaching contemning, and even curſing and wiſhing the Death of a Father, to be Inſtances of Gallantry and polite Education: Even among Gentlemen, we hear it often ſaid, *What am I more obliged to my Father than to another Man? If he has no Eſtate to give me, I owe him no Duty:* While the Heathen Nations, who have no other Light to guide them, but that of Nature, puniſh this Crime with greater Severity than in *Scotland.* The *Chineſe*, we find, are not content with puniſhing ſuch unnatural Children in their own Perſons; but the very Town, where ſuch Inſolence is ſuffered with Impunity, is deſtroyed; the very Foundations ploughed up, and the Ground never permitted to be built or inhabited again.

Pro-

1689. 1 W. & M.

Proceedings of the Houſe of Commons, againſt the Earl of CASTLEMAINE, on the 26th of *October*, 1689. 1 *W.* & *M.*

1689. 1 W. & M.

Lord Caſtlemaine's *Caſe.*

THE Earl of *Caſtlemaine*, on King *James*'s Abdication, taking a Journey from *London*, towards his Seat in *Montgomeryſhire*, was apprehended by the Mob at *Oſweſtree*, a ſmall Corporation on the Borders of that County, and carried before the Mayor of that Place, who ſet a Guard upon his Lordſhip at his Inn, and detained him Priſoner for a Month, refuſing to admit him to Bail: He was afterwards brought to *London* by a Party of Horſe, and committed to the *Tower*, (by what Authority does not appear:) However, the Houſe of Commons being informed his Lordſhip was a Priſoner there, ordered the Governor of the *Tower* to bring him before them; and, upon his appearing, the Speaker told his Lordſhip, They underſtood he went Ambaſſador to *Rome*; and, that he alſo took his Place at the Board, without taking the Oaths; both which were againſt Law; and demanded what he had to ſay for himſelf.

To which his Lordſhip anſwered, That he was ſo far from deſiring to be ſent on that Embaſſy, that he uſed his utmoſt Endeavours to avoid it: That he was commanded by the King to undertake that Employment, and could not refuſe it; and, as he knew no Law which forbad his Obedience, ſo neither did he know how ſuch a Law could be made; for the Pope being a Temporal Prince, and his Territories bordering on the *Mediterranean* and *Adriatick* Seas, if the Subjects of this Crown were drove into his Ports, or ſurprized in their Travels by a *Roman* Party, it would be ſtrange, if the Government ſhould want Power to ſend an Agent to reclaim them: That wherever the Commerce or Intercourſe of Nations had been prohibited, yet the Commander in Chief, much more the Sovereign, had ſtill the Liberty of ſending a Trumpet, or beating a Parley, and of ſending and receiving Letters in any Exigency of Affairs: And as to Religion, he had no Commiſſion concerning it, or ever tranſacted any thing with his Holineſs about it.

That while he was at *Rome*, his Houſe was a Place of Refuge for all his diſtreſſed Fellow-Subjects: He ſaw Juſtice done to the *Engliſh* Merchants, whenever they were abuſed or moleſted in their Traffick: His Care extended to all our Factories in *Italy*; not only the Conſuls, but every private Man had eaſy Acceſs to him, and he was indefatigable in ſerving them; inſomuch that the *Turky* Merchants had returned him their Thanks.

That he had ſpent great Sums of his own Money in his Embaſſy, for the Honour and Advantage of the Nation: And had he been ſent to the *Mahometans* at *Conſtantinople*, or the Pagans of *China*, the Figure he made would not have been cenſured, as an Honour done to their reſpective Religions, but for the Glory of his own Nation: And he could not but hope, they would have a favourable Opinion of an Ambaſſador, though at *Rome*, who to the utmoſt of his Power, had maintained the Glory and Grandeur of the *Engliſh* Nation: That if he had done amiſs in obeying the King's Commands, then no Conſul who purſued a Pirate or Banditti to *Rome*, nor any private Factor, who followed a Debtor thither, could be innocent; but might be charged as Contemners or Breakers of the Law.

That as to his ſitting in Council without taking the Oaths, the Judges had delivered their Opinions, that the King could diſpenſe with them; and therefore, he did not think his omitting to take them any Crime: If it was a Fault, the Judges were more to blame than he, who led him into that Error.

Then the Houſe demanding to ſee his Lordſhip's Inſtructions; he anſwered, That at his ſetting out for *Wales*, he burnt his Papers, eſpecially thoſe that related to *Rome*, which he knew, in theſe Times of Trouble and Diſtraction, would render him liable to the Cenſure of every malicious Man: But there was nothing in them but Things of Courſe, and Copies of thoſe Powers might be found in the Lord *Sunderland*'s Office; and he had not any private Inſtructions.

The Commons commit his Lordſhip for High-Treaſon.

Then his Lordſhip withdrawing, the Commons ordered, That the Earl of *Caſtlemaine* ſhould ſtand committed to the *Tower*, by a Warrant from that Houſe, for High-Treaſon, in endeavouring to reconcile this Kingdom to the See of *Rome*, and for other High Crimes and Miſdemeanors.

His Lordſhip remained a Priſoner in the *Tower*, till the fifth of *February* following, when he brought his *Habeas Corpus*, and was admitted to Bail by the Court of *King's-Bench*, Mr. Attorney having nothing to object againſt him; and I do not meet with any further Proſecution of this Lord afterwards.

Remarks.

His Lordſhip complained, That he was illegally impriſoned and detained; which he would have Reaſon for, if it had been in ſettled Times; but Allowance muſt be made for ſuch great Turns of State. It was certain, there was leſs Miſchief done, and fewer illegal Acts committed, than could have been expected on the Abdication of King *James*. But how the Houſe of Commons came to order his Lordſhip to be detained in Priſon for High-Treaſon, by their own Warrant, when the Courts of *Weſtminſter-Hall* were open, and Magiſtrates appointed by King *William*, who might have committed the Priſoner in a legal and regular Way, is not eaſy to conceive; for the Houſe of Commons ſeldom do commit for High-Treaſon, but leave it to the Magiſtrate, whoſe proper Buſineſs it is; eſpecially if the Party be none of their own Members, as the Lord *Caſtlemaine* was not.

1689. 1 W. & M. Price's *Case.*

The Trial of JOHN PRICE, Eſq; and one hundred other Proteſtants, for *High-Treaſon*, at the Aſſizes at *Wicklow* in *Ireland*, on the fifth of *March*, 1689. 1 *W.* & *M.*

1689. 1 W. & M.

THIS is indeed no Trial, but barely an Arraignment: For the Priſoners making their Challenges, there were not Freeholders enough remaining in the Pannel to try them; and before another Aſſizes, the War commenced between King *James* and King *William*, and the Courts of Juſtice were ſhut up; and the War concluding in Favour of the latter, they were diſmiſſed of Courſe.

The Caſe was no more than this: Mr. *Price* and his Neighbours had ſhut themſelves up in his Houſe, or Caſtle of *Ballinderry*, to prevent their being plundered by the *Iriſh* Papiſts; and refuſing to ſurrender to ſome Popiſh Officers, this was termed a Rebellion; and they were all indicted for High Treaſon, though they did ſurrender afterwards to Colonel *Sheldon*, who was ſent by the Government to ſummon them.

1690. 2 W. & M. *Lord* Preſton's *Trial.*

The Trial of Sir RICHARD GRAHME, Bart. (Viſcount *Preſton*) for *High-Treaſon*, at the *Old-Baily*, *London*, on the 16th of *January*. 1690. 2 *W.* & *M.*

1690. 2. W. & M.

The Indictment.

THE Priſoner was indicted and arraigned (together with *John Aſton*, and *Edmund Elliot*, Gentlemen) for High-Treaſon, in compaſſing the Death of their preſent Majeſties King *William* and Queen *Mary*; and, for that End, on the 29th Day of *December*, in the ſecond Year of their ſaid Majeſties Reign, at the Pariſh of St. *Clement-Danes*, in the County of *Middleſex*, traitorouſly conſulting and agreeing to raiſe great Numbers of armed Men, to make War and Rebellion againſt the ſaid King and Queen; and preparing and compoſing divers treaſonable Letters, Notes, Memorandums, and Inſtructions, in Writing, to inform *Lewis* the *French* King, and his Subjects, their Majeſties Enemies, of the Number, Force, and Condition of their Majeſties Ships of War; and how the Caſtles and Fortreſſes of *Portſmouth*, *South-Sea*, and *Goſport*, were fortified, and might be taken; as alſo how they might invade the Kingdom, and depoſe their Majeſties; and when and where the Enemy's Fleet might attack their Majeſties, inſult the City of *London*, and procure War and Rebellion in the Kingdom: That they did alſo keep and conceal two ſeveral Bills of Exchange, for the Uſe of the Enemy; and, for the Sum of 100 Pounds, did hire a Ship to tranſport themſelves and the ſaid Bills of Exchange, Notes, Memorandums, and Inſtructions, beyond Sea, to their Majeſties Enemies: That they prepared a Boat to carry them to the ſaid Ship; and being on Board, did ſail towards *France* with the ſaid Papers: And the Indictment further charges them with adhering to the ſaid Enemies of the King and Queen, and preparing the ſaid Papers, *&c.* in Execution and Performance, of the ſaid Adheſion, againſt the Duty of their Allegiance, *&c.*

Lord Preſton *inſiſts on his Peerage.*

The Lord *Preſton* upon his Arraignment, ſaid, He found he was indicted by the Name of Sir *Richard Grahme*; but he thought he was intitled to another Way of Trial, as being a Peer of *England* before the Vote of Abdication; at a Time when all Writs and Proceſſes run in the late King's Name, and all Officers acted by Virtue of his Commiſſions.

The Lord Chief Juſtice *Holt* anſwered, If his Lordſhip pleaded that he was made a Peer by a Patent under the great Seal, he muſt produce it under the Great Seal.

Lord *Preſton* replied, He hoped the Court would enable him to do it, by ſending an Order to the Clerk of the Houſe of Lords to bring the Patent, for it was in his Hands.

The Chief Juſtice ſaid, That was not in their Power; and, if he inſiſted on his Peerage, he muſt be ready to make it out immediately, they were not to enable him to plead to the Juriſdiction of the Court.

Lord *Preſton* then deſired his Counſel might be heard to that Matter.

Mr. Solicitor ſhews his Patent was diſallowed.

Here Mr. Solicitor *(Somers)* informed the Court, that on the elevent, of *November*, 1689, the Lord *Preſton* did claim his Peerage in the Houſe of Lords, and produced his Patent from the late King *James:* Whereupon the Houſe of Peers committed him to the Cuſtody of the Black-Rod: And the next Day, upon a ſolemn Debate, concerning the Validity of the Patent, their Lordſhips having conſulted the Judges, did adjudge and declare, That the Patent was null and void; and, upon the 27th of the ſame Month of *November*, upon my Lord *Preſton*'s Submiſſion and Petition, and diſclaiming his Right of Peerage, his Lordſhip was diſcharged; and this Matter having thus received a ſolemn Determination in a proper Court, he did not thing it would have been urged again in this Place: But that there was nothing offered by my Lord, that the Court could take any legal Notice of: If my Lord would plead to the Juriſdiction of the Court, he ought to bring his Plea in Form, and be ready with his Proofs to make it good.

Then the Chief Juſtice, and the reſt of the Judges, declared, His Lordſhip had offered nothing they could take Notice of, unleſs he had his Patent to produce; and they could not give him Time to plead to the Juriſdiction of the Court.

His

1690. 2 W. & M.

The Prisoners desire a Copy of the Indictment.

His Lordship, and the other Prisoners, then desired the Indictment might be read in *Latin*; which was granted: They also desired a Copy of the Indictment; insisting, that by the 46th of *Edw.* III. every Prisoner might have a Copy of the Records; and that it was given as a Reason for the Reversal of Mr. *Cornish*'s Attainder, that it was not a legal Trial, because he had not a Copy of his Indictment.

The Chief Justice answered, That was a private Act; he never saw it, nor could he take Notice of it: It had not been the Course to allow a Prisoner a Copy of his Indictment; it was denied to Colonel *Sidney*, Sir *Henry Vane*, and my Lord *Russel*.

Then the Lord *Preston* cited the Statute of 46 *Edw.* III. which says, That all Persons were to have Copies of Records, and desired Counsel to speak to it.

The Chief Justice answered, That was only meant of Records, that were to be given in Evidence, and the Indictment was no Evidence; nor did they think fit to allow him Counsel in a Case that was so plain.

and Time to prepare for their Trial.

Then the Prisoners insisted on having more Time allowed them, to prepare for their Trial, having had but six or seven Days Notice. The Chief Justice answered, Seven Days was very fair Notice: The Prisoners answered, that three of the seven Days they had not the Liberty of seeing their Friends or Counsel.

The Court told them, They debated the Time of their Trial too early; they must first plead to the Indictment.

Then the Prisoners severally pleaded, *Not Guilty*.

The Prisoners again desiring that the Trial might be put off, that they might make Enquiries into the Jurors returned upon the Pannel: Mr. Sollicitor answered, There could be no Reason for putting off the Trial longer than till To-morrow; that was Time enough for making such an Enquiry as was fit and justifiable: But if by Time to look into the Jury, was meant Time for tampering with them, that, he was sure, the Court would not permit.

The Lord *Preston* replied, It was a very hard Presumption, that their asking Time to enquire into the Pannel, was with a Design to tamper with the Jury. If he was to be tried to Morrow, he was as willing to be tried to Day; for he was as ready now, as he should be then.

Mr. *Ashton* added, That all such hasty Proceedings were thought very hard in the late Times; and particularly, the denying Mr. *Cornish* Time: And it was one of the Reasons given in this King's Declaration for his coming into *England*, the Hardships that the Law laid upon Men in their Trials, which he came to prevent.

The Lord Chief Justice *Pollexfen* answered, When Men were plotting against the Government, they ought not to have Time given them to carry on their Plots: They might desire the Trial to be put off, in Hopes the King of *France* might come and determine the Matter in the mean Time; nor would the Court give them longer Time than till the next Day.

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The Prisoners being brought to the Bar again, on *Saturday* the 17th of *January*, 1690-1, and the Pannel called over, they declared, they would make their Challenges severally. Whereupon they were tried apart; and Mr. *Ashton* and Mr. *Elliot* being sent back to *Newgate*, (though they desired to be present at the Lord *Preston*'s Trial), his Lordship was ordered to look to his Challenges.

Lord Preston *tried separately.*

Challenges by the King's Counsel.

Several being challenged by the Prisoner, and others for the King, the Lord *Preston* insisted the King's Counsel ought to shew Cause; but was told by the Court, they need not to shew Cause, till the Pannel was gone through.

A Jury being sworn, Mr. *Knapp* opened the Indictment; and Mr. Solicitor, Sir *John Somers*, shewed the Nature and Course of the Evidence.

Mr. Solicitor opens the Evidence.

Mr. Sollicitor-General. My Lords and Gentlemen of the Jury, the Indictment hath been opened to you at large, and I do not doubt, but you have observed it: It consists of two Parts, which are formed upon two several Branches of the Statute of the 25th of *Edw.* III. The one is for Compassing and Imagining the Deposing and Destruction both of the King and Queen; the other, for Aiding and Assisting the King and Queen's Enemies.

Treason, Gentlemen, consists in the Imagination of the Heart; but because that Imagination of the Heart can be discovered no other way but by some open Act; therefore the Law doth require that some Overt-Act, manifesting that Intention and Imagination, be assigned and proved: I doubt not, but you have observed that there are several Overt-Acts, of both these Kinds of Treason, assigned in this Indictment.

Gentlemen, The general Design of the Conspiracy (as will appear by the Evidence) was this: The King and Queen were to be deposed; and this was to be effected by a *French* Army, and a *French* Fleet. It will be easily granted, that nothing more dreadful can enter into the Imagination of an *English* Man, than the Destruction of our Fleet, and the Conquest of the Kingdom by the Arms of *France*.

But yet it will be Part of the Evidence, that we shall offer to you, that the Prisoners, and others of the Conspirators, seem to be of another Mind; for, amongst the Papers which were taken with the Prisoners, you will see one, which is stiled, *The Result of a Conference*; wherein they pretend to shew, the Possibility of restoring King *James*, by the Power of the *French* King; and yet to preserve the Protestant Religion, and the Laws and Liberties of the Kingdom. They themselves went not further than to think it possible; and, I believe, it will be hard to persuade any other *English* Man, that it is possible; unless one Instance could be given, that the *French* King ever employed his Arms for setting up any Body, but himself, his own Religion, and his own Government. I never heard, that he did pretend to form any Part of his Glories upon the Virtue of Moderation, or Self-denial. And there can hardly be imagined a greater Instance of Self-denial, than for the *French* King, after he had destroyed the

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the *Dutch* and *Engliſh* Fleets, and ſubdued our Forces at Land, not to make uſe of his Succeſs, ſo as to add theſe three Kingdoms to his Conqueſts, and poſſeſs himſelf of the unconteſted Dominion of the Sea for ever; but only to intitle him, at ſo great Hazard and Expence, to become a Mediator between King *James* and the People of *England*, and, by his Mediation, to eſtabliſh the Proteſtant Religion, and the Liberties of the People: And yet, as abſurd as this ſeems, you will find this to be the Reſult of one of their Conferences. I did never think it was the Part of any, who were of Counſel for the King, in Caſes of this Nature, to endeavour to aggravate the Crime of the Priſoners, by going about to put falſe Colours upon Evidence, or to give it more than its due Weight; and therefore, I ſhall be ſure to forbear any Thing of that Nature: But I think it my Duty to give ſome ſhort Account of the Nature and Courſe of the Evidence to be produced to you; which conſiſting of ſeveral Sorts, it will be in ſome Sort neceſſary to open it, that you may the more clearly apprehend it, and with more Eaſe make your Obſervations upon it. Gentlemen, we ſhall produce in Evidence, as well living Witneſſes, as Papers and Writings; which, by a ſtrange Kind of Providence, were taken upon my Lord *Preſton*, and the other two Perſons named in the Indictment, when they were apprehended; and therein this Deſign, that I have opened to you, will be made evident beyond all Contradiction.

As to the living Witneſſes, the Courſe of the Evidence will be this: One *Nicholas Pratt* is the Owner of a Smack, called the *Thomas* and *Elizabeth*; he does uſually entruſt his Wife, *Jane Pratt*, with the hiring out this Smack; *William Pacely* is Maſter of the Veſſel, and has of late been made a Part-owner, to protect him from being preſſed; for it is a Privilege that the Owners of Veſſels claim, not to be preſſed.

Some Time ſince, (the Witneſſes will tell you the preciſe Time), this *Jane Pratt* was ſent for to one Mr. *Burdett*'s Houſe, in the City, where ſhe met with Mr. *Aſhton*; who deſired to know, whether ſhe could undertake to convey him, and ſome others, with Safety into *France:* She ſaid, ſhe did not doubt but ſhe could do ſo; and thereupon Mr. *Aſhton* told her, that he and his Friends were Merchants and Traders, and that they ſhould make great Advantage, to the Value of one thouſand Pounds at leaſt, if they could be there quickly. Their Diſcourſe went no farther at that Time; but Mrs. *Pratt* was appointed, by Mr. *Aſhton*, to bring the Maſter of the Veſſel along with her, for he had a Mind to diſcourſe himſelf with the Maſter, and they were to meet at the *Wonder*-Tavern in *Ludgate-ſtreet*; and, becauſe there ſhould be no Miſtake about the Meeting, Mr. *Aſhton* gave the Woman a Note of Direction in Writing, ready to be produced.

Accordingly, by the 29th of *December*, Mrs. *Pratt* and the Maſter came to the *Wonder*-Tavern, where Mr. *Aſhton* met with them; and there they treated of the Price to be given for the Hiring of this Veſſel to carry them to *France*; and I think one hundred and fifty Guineas was the Sum then inſiſted upon; but no Bargain was made at this Time: But there was a new Appointment to meet the next Day, which was the 30th of *December*, at Mr. *Burdett*'s Houſe. 1690. 2 W. & M.

The next Day, when ſhe and the Maſter came thither, they found there together *Aſhton* and *Ellyot*, the two other Perſons named in the Indictment, and there this Matter was treated of with great Secrecy, in Mrs. *Burdett*'s Bedchamber.

And they came to an Agreement, that one hundred Pounds ſhould be the Sum to be paid to Mrs. *Pratt*, for conveying into *France Aſhton* and *Ellyot*, and two other Perſons: So the Contract was originally made for others, beſides Mr. *Aſhton* and *Ellyot*; and the Money was actually depoſited by Mr. *Aſhton* and *Ellyot* in Mr. *Burdett*'s Hand, and a Six-pence was broken, one half of which was delivered to Mrs. *Burdett* to keep, the other half Mr. *Aſhton* was to take along with him; and, when the Maſter had ſafely landed them in *France*, Mr. *Aſhton* was to deliver his half of the Six-pence to the Maſter, which being brought to Mrs. *Burdett*, either by him or Mrs. *Pratt*, upon the joining of the two Pieces together, the Maſter was entituled to receive the 100 *l.*

The next Appointment was, to meet at one Mr. *Rigby*'s Houſe, in *Covent-Garden*, and that was to be on the 31ſt of *December*, when the Voyage was to be begun; and the Tide not ſerving to go through Bridge till late, the Appointment was to meet the later: When they, Mrs. *Pratt* and the Maſter, came there, they found only Mr. *Aſhton* and Mr. *Ellyot*; but before that Time, Care was taken to provide a Sculler at *Surry-Stairs*, to be ready to carry them on Board the Smack; and the Waterman was appointed to ſtay in a little Alehouſe thereabouts, to be ready when he ſhould be called. About Ten o' Clock at Night, four Perſons came down together, and went into this Sculler, with the Maſter of the Smack, and made what Haſte they could through Bridge, till they came to *Pickle-herring-Stairs*, over againſt the *Tower*, where the Smack lay; and there went aboard the Maſter and theſe four Perſons, my Lord *Preſton*, a Servant of my Lord *Preſton*'s, Mr. *Aſhton*, and Mr. *Ellyot*.

The Smack ſet ſail, immediately after they were on board, and their Haſte made them carry away the Waterman's Coat, which he had lent them whilſt they were in the Sculler; and that Accident was the Occaſion of diſcovering who the Waterman was that carried them from *Surry-Stairs*.

After they were on board the Smack, they were poſſeſſed with great Fear of being ſurprized; they knew the Nature of the Buſineſs they were about, and the Danger they were in, if they ſhould be diſcovered; and therefore, when they were to paſs by the *George* Frigate, a Man of War that lay in the River, they deſired the Maſter to hide them; which he did, by putting them under the Quarter-Hatches, a Place where they could not ſtand or ſit, but muſt lie along on the Ballaſt: When they were paſſed by the *George* Frigate, they

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they quitted that Place; but when they were near the Block-houſe at *Graveſend*, they grew apprehenſive, and they deſired to hide a ſecond Time, which was accordingly done.

And they continued to lie in that Place till they were taken; and it was a happy Thing they did ſo: The Place was ſuch, that they had not any Poſſibility of throwing away the Letters and Papers, though they had made Preparation for it, in Caſe of any Accident, having tied them together, and fixed a Piece of Lead to them, that ſo, if they ſaw themſelves in danger of being taken, they might eaſily ſink the Pacquet: But being ſo cloſe ſhut up in this Place, that they could not execute their Purpoſe, the Papers were taken, and will be offered to you in Evidence.

Gentlemen, Captain *Billop*, by the Order of a noble Lord, now preſent, was directed to uſe his utmoſt Diligence to ſeize ſome dangerous Perſons, of whoſe Deſign of going beyond Sea, for ſome very ill Ends, an Intimation had been given: He got ready a Pinnace well manned, and went in Purſuit of them down the River; and, both as he went, and returned, he took Care to ſearch ſuſpected Veſſels: When he came to this, he demanded of the Maſter, what Number of Men he had on Board, pretending he came to preſs Men: The Maſter told him, he had but three, and for thoſe he had a Protection: But the Captain ſaid, he muſt be better ſatisfied, and muſt ſearch the Veſſel; and in the Search he found theſe four Perſons, lying concealed in this ſecret Place, under the Quarter-Hatches.

As they were taken out, one after another, one of the Sea-men obſerved Mr. *Aſhton* to take up a Bundle of Papers from off the Ballaſt, and put it in his Boſom; and near the Place where the Papers lay, he took up two Seals, which after proved to be my Lord *Preſton*'s Seals, when he was Secretary: Captain *Billop* being informed of this by that Seaman, he put his Hand into Mr. *Aſhton*'s Boſom, and took away from him the Bundle of Papers with the Lead fixed to it.

When they were put on Board the Captain's Pinnace, they all preſſed him much, that he would let them go on Shore at *Graveſend*; pretending Want of Refreſhment, they not having eaten, and the Night having been cold: But he did not think that proper nor ſafe; but told them, they ſhould go on Board the *George* Frigate, and refreſh themſelves there.

When they came on Board the *George* Frigate, all the three Gentlemen, and my Lord *Preſton* in particular, were very earneſt with Captain *Billop*, to diſpoſe of the Bundle of Papers, mixing extraordinary Promiſes with great Compliments.

Not prevailing there, when they were returned to the Pinnace, they renewed their Sollicitations; and one of them told him, it would be eaſy to remove all Suſpicion, by fixing the Lead to ſome other Papers of little Signification, which were found in my Lord *Preſton*'s Pocket, which he might produce; and they would without Difficulty paſs for the Papers that were taken.

But the Captain was too juſt, to comply with this Propoſal. When they found he was not to be moved, you will find from the Witneſſes, that their Promiſes were turned into Threats, and they uſed another Sort of Language.

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When they were brought to *Whitehall* Stairs, upon their Landing, they gave Money to the Maſter and the Sea-men, deſiring them to ſay, they were hired to go for *Flanders*, and not for *France*.

Gentlemen, theſe Things which I have opened, carry a ſtrong Preſumption of Guilt; for *Engliſhmen*, eſpecially one of that Quality of my Lord *Preſton*, to go into the Country of an Enemy, without any Manner of Paſſport; and, in ſuch a Manner, as they could not expect but to be ſeized for Spies, unleſs they were aſſured, that their Character was ſo well known there, that they ſhould be looked upon not as Perſons coming to get Intelligence, but to give it; unleſs they were well aſſured of a good Reception, when they came there.

But there is no Occaſion to leave any Thing to Conjecture in this Caſe; what is contained in theſe Papers, makes the Deſign of the Voyage beyond Diſpute. I think, Gentlemen, after you have heard the Evidence, you will be very well ſatisfied, that my Lord *Preſton*, and the other two, who ſtand indicted, were equally concerned in the Papers: They were all alike earneſt to preſerve them from being ſeen; they all ſolicited for the diſpoſing of them, and promiſed Rewards that they might prevail.

Gentlemen, theſe Papers are of various Natures. One, I mentioned before, is intitled, *The Reſult of a Conference between ſeveral Lords and Gentlemen, both Tories and Whigs; in which it was undertaken to prove the Poſſibility and Methods of reſtoring King* James *by a* French *Power, without indangering the Proteſtant Religion, and the Civil Adminiſtration, according to the Laws of this Kingdom.*

Another contains Heads for a Declaration to be prepared, in order to be publiſhed, when the *French* have had Succeſs at Sea, and are landing; and that is filled with ſuch Pretences, as they thought moſt ſpecious, and moſt likely to amuſe and delude the People.

There is another Sort of theſe Papers, which conſiſts of Letters: Theſe Letters are directed in falſe Names, and are not ſubſcribed; and, it is not to be imagined it ſhould be otherwiſe: Yet, Gentlemen, (though that is not the preſent Buſineſs) the Hands of the Writers of theſe Letters are very well known, and the Subject Matter of them will eaſily reveal to you, for whom they were intended: For though theſe Letters are moſt of them written under divers Cants; ſome under the Colour of Trade; ſome of them under the Colour of a Law-Suit, for the redeeming of a Mortgage, others under the Notion of a Match, and a Settlement to be made upon that Match; yet the real Buſineſs is ſo plain, that you need but hear them read, to ſee through the Diſguiſe.

Though they begin generally in the Stile of Merchants, writing to one another, or the like; yet towards the End of the Letters, you will obſerve expreſſions of Duty and Reverence Terms which do not uſually paſs in

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Correſpondence between Perſons of that Sort) ſufficient to ſhew, that ſomewhat elſe was intended to be covered, in what went before.

Gentlemen, it will appear to you, that ſome of the Writers of theſe Letters were of the Number of thoſe who were ſecured the laſt Summer, when the *French* Fleet was upon our Coaſts: And you will obſerve they complain, that by Reaſon of that Reſtraint, the Deſign was very much hindered, though they have endeavoured to redeem that Loſs of Time, ſince their Diſcharge, and have carried on the Buſineſs with more Vigour than ever.

In ſhort, the Deſign of theſe Letters, is to importune the ſetting out of the *French* Fleet with all poſſible Expedition: They ſay, they muſt not ſuffer ſuch a fit Seaſon to be ſpent unprofitably: That the beſt Time is between this and the Firſt of *March*, to come to a good Market; and, if they come not before the Tenth of *March*, all will be loſt. In another of their Letters, they ſay, if the Suit be well ſollicited and managed, it may come to a final Hearing before the End of *Eaſter* Term.

They complain, That there are ſeveral indiſcreet Letters come from St. *Germains*, that turn to the Prejudice of the Deſign: Thoſe Letters are not enough diſguiſed, to deceive the People here, but ſpeak too plainly what is to be expected from themſelves, and from the *French*. You will take Notice, that the Letters which all you will hear, are all Bills with high Characters of the Bearer; for which Reaſon they write in ſuch general Terms, becauſe the Bearer was intruſted with the whole. Some of the Letters ſay no Particulars are, or need be expreſſed, becauſe he will inform them of every Thing: Others, That they could not write ſo much as he could ſay; and, that nothing was wanting, but to allow him a full and fit Seaſon to give an Account of all the Buſineſs; and that they entirely depend upon his Account of them, and their Condition.

And, Gentlemen, in one of the Letters, the Bearer is ſtiled a Lord; and to whom can that be applied, unleſs to the Priſoner at the Bar.

In another Letter, when they ſpeak of ſending the Copper and the Linen (the Goods pretended for carrying on the Trade), it is added, and what the Meaning of that is, they muſt refer to the Bearer, who was able to give them a particular Account.

I have mentioned ſo much of the Papers, only that you might have a general Notion of them; that ſo, when you have heard them read, you may more readily make your Obſervations: I aſſure you, I have been as careful as I could not to exceed the Truth, in opening any Part of the Evidence: But it is your Part to ſee, whether what I have opened be made out in Proof.

There is another Paper, that gives an Account of their Majeſties Fleet to be ſent out this Summer; and there is an Obſervation at the End of it, that it was hoped it may be out in *March*: But you will find by other Papers (and particularly by one of my Lord's own Hand-writing) that he was of another Mind, that the Fleet will not be out before *June*.

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Gentlemen, the laſt Sort of Papers which I will mention to you, are ſome Memorandums and Notes, written by my Lord *Preſton*, wherein he gives an Account of ſeveral Things of great Moment; which, as his Memory ſerved him, are put together without Connection or Method, being only to remind him of them, when he ſhould have Occaſion to mention them.

He therein gives an Account of the Number and Strength of the *Engliſh* Fleet, how they are manned, and who are the principal Officers and Commanders, and in what Time they will be out.

He likewiſe gives an Account of the Number and State of the *Dutch* Fleet, and how that is to be divided and diſpoſed of.

And with Relation to the *French* Fleet, there is a particular Memorandum, that they muſt be out at the furtheſt in *April:* That they muſt be out ſo as to ſeparate the *Dutch* Fleet and ours; that they muſt be ſure to look in at *Spithead* as they come by, and ſecure what Ships ſhould be in that Harbour from joining the reſt.

There is alſo a Hint given of thoſe, that wore moſt likely to come in to them; and there is Advice in what Place their Fleet ſhould fight ours: They muſt not come ſo high as *Beachy*, where they fought the laſt Year, but rather chuſe to fight in the Chops of the Channel.

There is an Account of *Portſmouth*, how fortified and garriſoned; that it had but 500 Men; that *Goſport* had nothing but Palliſadoes about it, and *South-Sea* Caſtle very weak.

There are Memorandums of other Heads, proper for a Declaration.

There are the Names of ſeveral Perſons, ſome of them with particular Characters, and ſome without; and, amongſt the reſt, there is this Character given of the Clergy of the City of *London*, that they are the worſt of all others.

Gentlemen, we ſhall proceed to the Evidence, and firſt call the living Witneſſes, and then read the Papers; and when you have heard what the one can ſay, and what the other contain, we muſt leave it to your Conſideration, and ſubmit all to the Direction of the Court.

The Witneſſes for the Crown.

The King's Witneſſes were then called and firſt Mrs. *Pratt* was ſworn, who depoſed, That Mr. *Elliot* hired a Smack of her to go to *France* for one hundred Pounds, at Mr. *Burdet*'s Houſe in *Queen's-ſtreet*; and that her Men fetched a Hamper and a Trunk from Mr. *Burdet*'s, and carried them to the Veſſel: And, that Mr. *Elliot* wrote a Note for her, to call for the Company at Mr. *Rigby*'s, the *Seven-Stars* in *Covent-Garden*, about ten the next Night, which ſhe did, and found Mr. *Aſhton* there, who went out and fetched Mr. *Elliot*, and two other Gentlemen ſhe never ſaw before: That Mrs. *Aſhton* afterwards came in, and ſaid, She was afraid they ſhould have no very good Luck, for the Cock crowed: And ſome of the Company told her People, if they went ſafe that Time, they would help them

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them to the earning of 1000 Pounds before *Lady-Day*.

That the Gentlemen went from *Rigby*'s about eleven o'Clock at Night; ſhe did not go with them, but ſtaid there with Mrs. *Aſhton*, who gave her the Leg of a Gooſe.

Paſely, the Maſter of the Smack, was ſworn, and depoſed, That he and his People fetched a Trunk and a Hamper from Mr. *Burdet*'s, and carried them on Board the Smack (which lay at *Billingſgate*) as Mrs. *Pratt* had teſtified; and that they ſaw the Money told out at Mr. *Burdet*'s, being ninety-three Guineas and a Sixpence; which was to be paid his Owner, by Mrs. *Burdet*, on his Return from *France:* That Mr. *Aſhton* broke the Sixpence, and gave his Owner one half, and took the other himſelf; and when he (the Maſter) brought back the other half of the Sixpence, which Mr. *Aſhton* had, the Money was to be paid.

That they called upon the Company as they were directed, at the *Seven-Stars*, in the little Piazza in *Covent-Garden*, about Ten the next Night, and from thence to *Surry-Stairs*, where they called at an Alehouſe for their Waterman; and he (this Witneſs) was ordered to go firſt into the Boat; where being ſeated, there came in four Men, namely, Mr. *Aſhton*, Mr. *Elliot*, my Lord, and his Man: That they went through Bridge, and went on Board the Veſſel which was riding on *Southwark* Side, over-againſt the *Tower:* That ſailing down the River, the Gentlemen were hid under the Quarter-Hatches, as they went by the *George* Man of War, and hid themſelves again, when they came over-againſt the *Block-Houſe* at *Graveſend*; and Captain *Billop* coming on Board there, took them all Priſoners: That the Captain commanded the Gentlemen to go into his Boat, and the Witneſs and his Sailors with them, and carried them all to *Whitehall*.

When they came to *Whitehall-Stairs*, one of the Gentlemen ſaid to him (the Witneſs), Maſter, when you come upon your Examination, ſay you were bound to *Flanders*, and not to *France*; gave him half a Crown and ſaid, he would take Care of him: *Aſhton* gave one of his Men half a Crown alſo; and my Lord's Man gave the other Sea-man half a Crown---And, that the Waterman who carried them on Board, left two Coats behind him in the Veſſel.

Charles Betſworth, the Waterman, depoſed, That a Gentleman called him, and asked him to carry him down the River, as far as the *Tower*, when the Tide turned; and that he agreed to carry him for half a Crown, and to wait for him at an Alehouſe near *Surry-Stairs:* That about Eleven, the Gentleman came with ſome others; and he took them into his Boat, and carried them on Board a Veſſel, which lay over-againſt the *Tower*; and returning through Bridge, he miſſed his Cloaths; and thereupon rowed towards the Smack again, to enquire for them; but ſhe was gone, and he did not hear of his Cloaths again till laſt *Friday* Sen'night, when they were ſent to him.

Fiſher, one of the Sailors belonging to the Smack, depoſed, That he carried the Trunk above-mentioned, on Board the Smack; and between Eleven and Twelve the ſame Evening, my Lord, Mr. *Aſhton*, Mr. *Elliot*, and my Lord's Man, came on Board, and ſailing down the River, they hid themſelves twice under the Hatches, and were taken by Captain *Billop*, over-againſt *Graveſend*, as the Maſter of the Smack had teſtified.

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Amonds, another of the Sea-men, confirmed *Fiſher*'s Teſtimony, and added, That when Captain *Billop* took them, he ſearched my Lord's Pockets, and took out ſome Papers, which he put into his own: That he gave his Lordſhip his Watch again, and ſaid, he would meddle with nothing but Papers: Then he ſearched Mr. *Elliot*, and Mr. *Aſhton*; and one of the Watermen telling Captain *Billop*, he ſaw *Aſhton* put ſomething into his Boſom, the Captain pulled out a Roll of Papers, with a Piece of Lead tied to it: And that when they came to *Whitehall*, my Lord's Man gave this Witneſs half a Crown, and bid him ſay they were bound for *Flanders*, and not for *France*.

Captain *Billop* depoſed, That on the laſt of *December*, about two o'Clock, the Lord Preſident, the Marquiſs of *Carmarthen*, told him, there were ſome Perſons going to *France* about Buſineſs of dangerous Conſequence, and deſired him (the Witneſs) to get them apprehended: That my Lord *Danby* furniſhed him with a Boat and Arms; with which he ran down the River as far as *Graveſend* that Night; and ſeeing this Veſſel come by, which his Men informed him was the Veſſel he looked for, and called the *Thomas and Elizabeth*; he went on Board, and found the Lord *Preſton*, Mr. *Elliot*, and Mr. *Aſhton*, under the Hatches in the Cabbin: That he ſearched his Lordſhip, took all the Papers he found on him, and put them into his own Pocket: Then he ſearched Mr. *Elliot*, but found nothing on him; but one of his Men telling him, Mr. *Aſhton* had put ſomething into his Boſom, he (the Witneſs) clapped his Hand into *Aſhton*'s Boſom, and pulled out a Packet, with a Lead fixed to it.

That he brought theſe Gentlemen, with the People that belonged to the Smack, up the *Thames* with him in his Boat; and Mr. *Aſhton* and Mr. *Elliot* telling my Lord that he (the Witneſs) was their Acquaintance, my Lord ſaid, he was glad he was fallen into the Hands of a civil Gentleman, and, if ever it lay in his Power to do him Service, he would; and uſed a great many kind Expreſſions, to induce him to diſpoſe of the Packet: Mr. *Aſhton* and *Elliot* alſo courted him to throw the Packet over-Board, invited him to go with them, and asked him, What Good it would do him, to injure ſo many honeſt Gentlemen? They ſaid, he had it now in his Power to make himſelf as great and as rich as he pleaſed: That the Tide would not always run that Way; and when nothing would prevail, they ſaid, *Every Dog had his Day*.

That he brought the Gentlemen and the Papers to my Lord *Nottingham*'s (the Secretary's) Office, and ſaw the Papers opened; and when my Lord *Nottingham* had read them, he tied them up, and ſent them by him (the Witneſs) to the Lord Preſident.

The Lord *Preſton* demanding, If thoſe were the ſame Papers that were taken on Board the Smack? *Billop* anſwered, He marked ſome of them, which he could ſwear to, and no more.

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Johnſon, one of *Billop*'s Boat's Crew, confirmed the Captain's Evidence, and added, That he ſaw *Aſhton* take the Packet off the Ballaſt, or Gravel, and put it into his Boſom; and there were a Couple of Seals lying by it, which he (the Witneſs) took up: And that they went on Board the *George* Frigate, and my Lord's Man told this Witneſs, he would give him ſomething to drink, if he would deliver him the Seals; but he (the Witneſs) delivered them to Captain *Billop*. (And the Captain depoſed, that the Seals produced in Court were the ſame he received of *Johnſon*).

That, as they were coming up the River, *Elliot* wiſhed a Thunder-bolt might ſink the Boat; and, when they went through Bridge, he wiſhed that *London-Bridge* might fall on their Heads.

The Lord *Nottingham* depoſed, That all the Papers he received of Captain *Billop*, he ſealed up, with his Seal, and delivered to the Captain again, when he had read them.

The Marquis of *Carmarthen*, Lord Preſident, depoſed, That Captain *Billop* brought him a Bundle of Papers, ſealed with Lord *Nottingham*'s Seal: That he ſhewed them to the King next Morning, and then delivered them, by his Majeſty's Command, to the Lord *Sidney*.

The Lord *Sidney* depoſed, That he marked every Paper, and then delivered them to Mr. *Bridgman*, who copied them, and delivered them to him again.

Bridgman depoſed, That my Lord *Sidney* delivered him the Papers, ſigned with his Lordſhip's Hand; and, when he had copied them, he delivered all of them to his Lordſhip again.

Here the Lord *Preſton* objected, That my Lord *Nottingham* acknowledged he opened no Papers, before he (the Priſoner) was called in and examined, and that then Captain *Billop* withdrew: He could not ſee, therefore, how the Captain could ſay, theſe were the ſame Papers he took in the Smack.

Captain *Billop* anſwered, My Lord *Preſton* obſerved very right, That after he had delivered the Packet to my Lord *Nottingham*, he (*Billop*) withdrew: But when he came in again, the Packet was in the ſame Condition he left it on the Table? he *believed* the Lord *Nottingham* had not opened it.

The Lord *Preſton* demanding, If this was ſufficient Evidence? the Chief Juſtice anſwered, It was Evidence enough to have the Papers read; but the Queſtion was, what Credit the Jury would give to the Evidence.

Then the Lord Preſident was deſired to look upon the Papers; and having caſt his Eye on them, he ſaid, This is one of the Papers I had from Captain *Billop*, and ſhewed the King, and this is another of them.

One of which Papers was afterwards read, entitled, *The Reſult of a Conference between ſome Lords and Gentlemen, both Tories and Whigs; in which it was undertaken to prove, the Poſſibility and Method of reſtoring King* James, *by a* French *Power, without endangering the Proteſtant Religion and Civil Adminiſtration, according to the Laws of this Kingdom.* The Subſtance whereof was,

1. That it was the Intereſt of *France* rather to endeavour to oblige, than conquer us.

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2. That *France* muſt take off the frightful Character we have of him, and ſhew he had no Deſign of returning our offended King a Conquerer upon us; upon which he will find many Lords and Gentlemen in his Intereſt.

3. That they muſt over-rule the Bigotry of St. *Germains*, where one ſilly Thing or other was done every Day, which obſtructed their Return; and, particularly, that none be ſuffered to ſend Letters from thence, but King *James*; for they were generally filled with Arguments againſt a Reſtoration: That King *James* muſt think of nothing ſhort of a Proteſtant Adminiſtration, and muſt give us a Model of this, by preferring Proteſtants at *St. Germains*.

4. That he ſhould encourage Lords and Gentlemen to come to him, of whom he might frame a Council; which would facilitate his Return and give Satisfaction here.

5. That the *French* King ſhould grant Liberty of Conſcience to the *Hugonots*, that we might believe his Conduct towards them flowed from the Hazard he thought himſelf in from their rebellious Principles, rather than an Inclination to Proſecution.

Laſtly, All other Meaſures depended on the Acceptance this Propoſal found; and an Anſwer was impatiently expected: This was ſaid to be prepared by the unanimous Conſent of Whigs and Tories, who were upon the Point of uniting in his Majeſty's Intereſt.

The Lord *Preſton*, on the reading this Paper, ſaid, He could ſafely ſwear, he never ſaw it: Then another Paper was read, of the like Tenor; and a third Paper was ſhewn to the Lord Preſident and the Lord *Sidney*, who teſtified it was in the aboveſaid Packet.

This contained the Heads of a Declaration: King *James* was adviſed to promiſe in it, that the Laws ſhould be the Rule of his Actions, and that he would endeavour to ſettle Liberty of Conſcience by Law; and, whatever had formerly occaſioned Jealouſies, particularly the Diſpenſing Power, ſhould be determined in a Parliament to be ſpeedily called.

That it ſhould be repreſented, he had ſhewn his Averſion to an Army of Strangers, by refuſing Aid from *France* on the Prince of *Orange*'s Invaſion; and declare, he would bring no more over with him, than for the Defence of himſelf and his loyal Subjects; and even theſe ſhould be diſmiſſed, when the Nation was rid of thoſe Foreigners, which had invaded it, and trampled on the Laws and Liberties of the People.

Then ſome Letters were read, that were written in canting Terms, ſubſcribed by no body: and ſome of them directed to no body: In one of them, the Writer ſays, His young Maſter had all their beſt Wiſhes, and daily got more Friends: In another, directed to Mr. *Jackſon*, the Writer ſays, He will never quit his Intereſt, whatever the reſt of the Freeholders do: That his Adverſary had diſobliged all the old Tenants, and a little Matter would redeem the Eſtate, if he would appear in *Weſtminſter-Hall* himſelf; and begs he would haſten to them, for that the Cauſe might be brought to a final Hearing before *Eaſter*, if it were well ſolicited.

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In another Letter, the Writer ſays, That in Trade, as well as in Government, Schemes muſt be laid; and adviſes his Correſpondent to lay his Deſigns probably, and purſue them diligently, and with Vigour; and though the Times were hazardous, yet by venturing boldly, when venturing was adviſeable, it often returned great Profit.

The Writer, in another Letter, informs his Correſpondent, That this was the Time to make large Advantages by Trading, the Sea being freer than for two Months paſſed, or than they could hope it would be two Months hence: That the Bearer was well inſtructed in the Markets, and what Goods they wanted, and when and where they ſhould be ſent; earneſtly deſiring this happy Opportutunity might not be loſt: That if the ſeveral Parcels promiſed did not arrive before the 10th of *March*, (eſpecially the Copper and the Linen, of which the Bearer would be more particular) he was ſatisfied the Summer's Profit would be loſt.

In another Paper, the Writer ſays, For his own Part, he would ſtay as long as he could be ſafe, though with never ſo much Trouble; but it would be a Comfort to know, when they were driven from hence, where they could be ſafe: The Report of People's Uſage was terrible; they ſuffered by the Indiſcretion of the Family at *St. Germains*, and the ridiculous Letters from them, which daily fell into the Hands of the Government; and that their Maſter and Miſtreſs were as little obliged to them as they were; tells him, the Bearer had furniſhed 200 *l.* for his Uſe, which he deſired might be paid.

A Cypher, with an Alphabet of Names, was alſo found to be in the Packet; in which *A.* ſtood for the King, *B.* for the Queen, *C.* the Prince of *Wales*, *D.* the Prince of *Orange*, &c. A Liſt of the *Engliſh* Fleet alſo was proved to be in the Packet; with two Bills of Exchange, in *French*, amounting to 500 *l.* and drawn on two Bankers in *Paris*: Some Memorandums of the Condition of the Fleet; when the *Dutch* were likely to join them, and how the *French* might fight the *Engliſh* Fleet before they were joined, were produced.

Some Memorandums alſo of the Strength of *Portſmouth*; intimating, that it was garriſoned by five hundred Men, commanded by *Gibſon*, a *Scotch* Pedlar. A Liſt alſo of the Admirals that commanded each Squadron, and ſome Heads for a Declaration, were inſerted: The King was adviſed to land in *Scotland* in *February*, and endeavour to unite the Epiſcopal and Presbyterian Parties: That his Army ſhould conſiſt of *Scots*, not *French*, and that he ſhould procure five thouſand *Swediſh* Foot: It would be to his Reputation to have a Proteſtant Ally: It was adviſed to block up *Newcaſtle* with *Scotiſh* Ships, and diſtreſs *London:* It was ſaid that *Ormonde* and *Brandon* were diſobliged about the Guards; mentions the proteſting Lords againſt the Uſurper; and ſays, three in five were againſt the Vacancy of the Throne: That the *London* Clergy were the worſt; *for we have their wiſhes, and they their Oaths.*

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Then Mr. *Townſend* depoſed, That he belonged to the Office of the Great Wardrobe, where he had Occaſion to ſee his Lordſhip's Hand ſometimes, and believed theſe Memorandums to be his Hand.

Mr. *Bland* depoſed, He had ſeen Lord *Preſton*'s Hand, and he believed theſe Papers were his Lordſhip's Hand-writing.

Mr. *Warr* depoſed, He believed one of the Papers of Memorandums to be his Hand; and as to the Seals that had been produced, he teſtified, that one was his Lordſhip's Seal, when Secretary of State, and the other his private Seal.

Then the Lord Chief Juſtice directing the Lord *Preſton* to enter upon his Defence; his Lordſhip obſerved, in the firſt Place, That the Treaſons he was charged with were none of them done in the County of *Middleſex*, and yet they were laid in the Indictment to be done in this County.---Then he deſired to know, whether the Memorandums were ſufficiently proved to be his; that is, Whether Similitude of Hands was Proof againſt him in ſuch a Caſe?

The Chief Juſtice demanding, If his Lordſhip would diſprove any of the Facts that had been teſtified againſt him? The Lord *Preſton* anſwered, he muſt deny the whole Fact, but had no Witneſſes, or Evidence to offer; and obſerved further, that none of the Witneſſes declared he knew any thing of going into *France*, or had any Concern in hiring the Ship; though he ſuppoſed if they had, that was not Treaſon; nor did they ſay, the Papers were found upon him.

The Chief Juſtice anſwered, If it was proved his Lordſhip had an Intention to carry thoſe Papers into *France*, and took Boat with them in the County of *Middleſex*, and went on Ship-board in order to it; the taking Boat at *Surry-Stairs* in *Middleſex*, and in Proſecution of that Intention, was an Overt-Act in the County of *Middleſex*.

The Lord *Preſton* anſwered, They had not proved that Deſign. The Chief Juſtice replied, He was of Opinion, if his Lordſhip had ſuch a Deſign to go with thoſe Papers into *France*, and thoſe Papers were framed by him, or he was privy to the Contents of them, then it was plainly proved, that he went into a Boat in the County of *Middleſex*, in order to carry on this Deſign; and that made the Indictment good: Whether he did take Water with an Intention to carry theſe Papers to *France*, that the Jury were to Judge of.

The Lord *Preſton* ſaid, There ought to be two credible Witneſſes to prove every Fact; and he hoped the Gentlemen of the Jury would conſider, there was nothing but Suppoſition as to him; and he hoped he and his Family ſhould not be ruined on a Suppoſition.

Then the reſt of the Judges on the Bench delivered their Opinions, That if the Jury believed my Lord *Preſton* took Boat with an Intention to carry thoſe Papers (which were treaſonable) to *France*, then there was ſufficient Evidence of an Overt-Act in the County of *Middleſex*.

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The Lord *Preſton*, however, ſtill inſiſted, That it was not proved theſe Papers were taken upon him; or that he did take Water at *Surry-Stairs* with an Intent to go into *France:* And thus having concluded his Defence, the Lord Chief Juſtice *Holt* proceeded to ſum up the Evidence, and direct the Jury.

The Chief Juſtice's Directions to the Jury.

Lord Chief Juſtice Holt. Gentlemen of the Jury, My Lord *Preſton* ſtands indicted of High-Treaſon, in Imagining and Compaſſing the Depoſition, Death, and Deſtruction of the King and Queen; and for that Purpoſe did write, or cauſe to be writ, ſeveral treaſonable Papers and Letters; deſigned to go into *France*, and there to correſpond with the *French* King and his Subjects, who are Enemies to the King and Queen, and to carry with him thoſe treaſonable Papers and Letters, containing a Project, and a formed Deſign, how this Kingdom ſhould be invaded by Foreigners.

There is another Treaſon in the Indictment mentioned, and that is for adhering to, and abetting, the King's Enemies; there being open War declared between the King and Queen and the *French* King.

You have heard, Gentlemen, a very long Evidence: Witneſſes have been produced *viva voce*, and ſeveral Papers have been read to you. Some of the Papers that have been produced, though they may ſeem myſterious and canting, yet they are not ſo very obſcure and unintelligible, but if you conſider them well, the Meaning of them will appear: Others of them are more expreſs, and do plainly demonſtrate a Deſign, that this King and Queen ſhould be depoſed, and that there ſhould be another Prince ſet upon the Throne, and reſtored to the Government of this Kingdom.

Gentlemen, there are two other Perſons mentioned in the Indictment with my Lord; and though my Lord is only now upon his Trial, yet the Evidence that doth affect them, doth alſo concern my Lord.

You have heard how there was an Intention of ſome Perſons to go to *France*; and how Mr. *Aſhton*, one of the two others that ſtand indicted with my Lord, did treat with one Mrs. *Pratt*, one of the Witneſſes, to hire a Veſſel for that Purpoſe; and it was by the Means of one Mr. *Burdet*, that lives in the City: They had a Meeting at *Burdet*'s Houſe, where they treated about the Price that ſhould be given for the Hire of this Ship to go to *France*, but at that Time they did not agree. It was concluded, that the Woman, and *Aſhton*, and *Burdet* ſhould meet at the *Wonder*-Tavern; but Mr. *Burdet* not being there, nothing was concluded upon then. After that, the Woman, Mr. *Burdet*, and *Aſhton*, and *Elliot*, met at Mrs. *Burdet*'s: The Woman inſiſted at firſt upon 150 *l.* After they had been treating for ſome Time, the Bargain was made to go to *France* for 100 *l.*

Then the next Thing conſidered, was, how this Money ſhould be paid; by Agreement ninety three Guineas, and Six-pence, which made up the 100 *l.* was depoſited in Mrs. *Burdet*'s Hand; a Six-pence broken, one Part Mrs. *Burdet* had, and the other Part of the Six-pence Mr. *Aſhton* had; and when either Mrs. *Pratt*, or the Maſter of the Veſſel did bring back that Part of the Six-pence that *Aſhton* had, to Mrs. *Burdet*, the Money was to be paid. 1690. 2 W. & W.

After this Agreement, they were appointed to go to the *Seven-ſtarrs* in *Covent-Garden*, to the Houſe of one Mr. *Rigby*; and there the Woman, Mrs. *Pratt*, and the Maſter of the Veſſel, *Aſhton*, and *Elliot* met; and they were that Night to go away, and to take Water at ſome Place near, to go on Ship-board; and having ſtaid there till it was about Ten o'Clock at Night, then they went away into the *Strand*, and ſo into *Surry-ſtreet*, and took Water at *Surry-ſtairs*.

But before they came from Mr. *Rigby*'s, ſome Perſons went to *Surry-ſtairs*, and met with that Fellow that was here produced, who was a Sculler, and did hire him to go through the Bridge, when the Tide ſerved, to carry ſome Gentlemen on Ship-board; they agreed with him for half a Crown, and he was to ſtay in a Houſe near the Stairs until they came.

And, at the Time appointed, Mr. *Aſhton* and Mr. *Elliot*, and the Maſter of the Veſſel, came to that Place, and my Lord *Preſton* and his Man with them, to take Water: My Lord *Preſton* was not at *Burdett*'s Houſe, at the hiring of the Ship, nor at Mr. *Rigby*'s; but it is proved by the Maſter of the Veſſel, that he took Water with the reſt of them at *Surry-ſtairs*; that he went with them on Ship-board, and was to go along with them.

Being on Board the Ship, they did appear to have ſome Apprehenſions of Danger; and, paſſing by a Man of War, my Lord *Preſton*, his Man, and the other two, went under the Quarter-Hatches, where they lay down, to prevent themſelves from being taken or diſcovered; and they hid another Time, when they came near *Graveſend*; and coming up, they, ſeeing a Boat coming towards them, hid themſelves again: Captain *Billop*, who it ſeems was ſent to apprehend them, pretended he was to preſs Seamen; and when he came on Board the Smack, he ſaid, he would preſs the Mariners, who anſwered they had a Protection; but he being upon the Search, pulled up the Boards of the Quarter-Hatches, and there was my Lord *Preſton*, and the other Perſons, lying down: It was not a Place that was very proper for Gentlemen, or indeed for any Paſſengers, to repoſe themſelves in; it was an uneaſy Place, no body could ſtand or ſit upright in it; nay, there was no convenient Place for lying down, but they muſt lean upon their Elbows, which Poſture thoſe Gentlemen were in; ſo that their Purpoſe was plainly to conceal themſelves, and that their concealing themſelves muſt be, becauſe of ſome Deſign they were about, which they would not have diſcovered.

They being taken out from under the Hatches one of the Witneſſes tells you, he ſaw a Packet lying there, and *Aſhton*, pretending to fetch his Hat, went down, took it up, and put the Packet into his Boſom; and the Witneſſes informing Captain *Billop* thereof, he cauſed *Aſhton*'s Coat to be ſearched, and from thence took the Packet, and a Piece of Lead tied to it, which was produced here in Court.

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When they were bringing away in Cuſtody, they ſeemed all of them to be very much concerned about this Packet; ſome of them, that is, *Aſhton* and *Elliot*, would have had it thrown, with the Lead, over-board: My Lord *Preſton* did not ſay ſo much, but complimented Captain *Billop* in this Manner; He was glad he was fallen into the Hands of a civil Gentleman, a Perſon of Worth, and he ſhould always acknowledge his Kindneſs, and would do him all the Service he could, if he would diſpoſe of the Packet.

My Lord *Preſton* was ſearched at that Time, and Letters of no great Moment taken about him. *Aſhton* and *Elliot* would have had Captain *Billop* to take thoſe Letters which were taken in my Lord *Preſton*'s Pocket, and tie the Lead to them, and have thrown the Packet over-board, and to report to the King and Council, that thoſe Letters were the Packet that was taken with the Lead, and ſo have perſuaded him to be falſe to the Truſt that was repoſed in him.

And *Aſhton* and *Elliot* uſed many Expreſſions to induce him to that Compliance: They told him the Government was unſtable, and every Dog had his Day, and the Tide would turn; and that he would deſerve very well, if he would change Sides, and go with them where they were going; and that he had Opportunity to get any Preferment he would have.

L. Preſton. My Lord, I hope your Lordſhip obſerves, that I ſaid none of all this.

L. C. J. Holt. No, my Lord, I do not ſay you did: My Lord *Preſton* did not ſay any Thing of all this, but only about diſpoſing of the Packet; that his Lordſhip ſpoke of to Captain *Billop*; and complimented him, and promiſed him Kindneſs, if he would diſpoſe of the Packet.

But, Gentlemen, as there was a Packet taken, ſo there were two Seals taken at the ſame Time, and in the ſame Place, which have been produced and ſhewn to you; they lay both of them upon the Ballaſt, under the Quarter-Hatches, near the Packet: The one of them is the Seal of my Lord *Preſton*'s own Coat of Arms, the other Seal belongs to the Secretary's Office, which Office my Lord once held in the late Reign.

L. Preſton. I beg your Lordſhip would be pleaſed to obſerve that the Papers were not taken upon me; and it can be no Treaſon to have Seals, I ſuppoſe.

L. C. J. Holt. Good my Lord, I will not do your Lordſhip any Wrong: I do not ſay that the Papers were taken about you, no, nor the Seals; but only, that they lay upon the Ballaſt, from whence the Packet was taken; and, I ſay further, that theſe Seals are not denied by your Lordſhip to be your Seals; the one is your own Seal of your Coat of Arms, which was taken at that Time, and ſo I do not your Lordſhip any Wrong, and, by the Grace of God, will not.

L. Preſton. It is no Crime, I hope, to have Seals.

L. C. J. Holt. I do ſay, my Lord, the Papers were taken about *Aſhton*, and not about your Lordſhip; but they lay upon the Ballaſt, where the Seals were, and where your Lordſhip lay: But how far my Lord *Preſton* is concerned in this Matter, is to be conſidered by you of the Jury by-and-by.

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Now, Gentlemen, you have heard how earneſt Mr. *Aſhton* and Mr. *Elliot* were; one of them, to wit, *Elliot*, wiſhed a Thunder-bolt might ſtrike the Boat under Water, as they were coming back; and when they came through Bridge, he wiſhed that *London-Bridge* had fallen upon them, and knocked them on the Head.

L. Preſton. But I hope that is not to lie upon me neither; for I ſaid no ſuch Thing.

L. C. J. Holt. No: But *Aſhton* and *Elliot* did ſay theſe Things; and how the Caſe ſtands as to that, in Relation to your Lordſhip, is to be conſidered: It is proved they afterwards gave Money to the Seamen, half a Crown a-piece to two of them, to ſay they were going to *Flanders*, and not to *France*.

Now, Gentlemen, that my Lord was on Board this Veſſel, that my Lord was under the Hatches, and that the Papers were taken in this Manner, is beyond all Contradiction; ſo likewiſe, that the Ship was hired for *France*, that my Lord took Water at *Surry-Stairs*, and was taken in this Veſſel, in that Manner you have heard.

The next Thing, Gentlemen, is about the Papers: I muſt tell you, though there are ſeveral of them that do ſeem myſterious, yet there are Papers that do ſhew a very great Deſign of depoſing the King and Queen, and a Purpoſe of altering the preſent Government.

But, Gentlemen, I will mention to you thoſe Papers that are very plain, and leave you to conſider what Conſtruction to put upon thoſe that are obſcure: There is one Paper that ſeems to be Inſtructions and Heads for a Declaration, that is to ſay, That the King of *France* muſt not come with a Deſign to make an entire Conqueſt.

L. Preſton. My Lord, with Submiſſion to your Lordſhip, I hope you will pleaſe to remember, and obſerve to the Jury, that Paper is not proved to be mine.

L. C. J. Holt. No, my Lord: I will do your Lordſhip no Wrong; but I cannot ſpeak all my Words at once.

L. Preſton. I am ſure you will not, my Lord; but I beg leave to put your Lordſhip in Mind.

L. C. J. Holt: Well then, Gentlemen, the Paper begins, that the King's Declaration is to be formed in general Terms; that he will govern by the Laws, that they ſhall be the Rule of his Actions; that he will endeavour to ſettle Liberty of Conſcience by a Law; and that whatſoever was done by him, that gave any Occaſion of Jealouſy, ſhall be ſettled by Parliament: That he hath given ſufficient Proof and Evidence of his not being willing to bring an Army of Strangers into the Kingdom, by refuſing the Succours the King of *France* offered him, and that were even ready to be embarked, upon the firſt Notice of the Prince of *Orange*'s Coming; that he brings ſuch an Army only as is neceſſary for his own Defence, and ſecuring ſuch of his loyal Subjects as ſhould come to him; and that he will diſmiſs them as ſoon as he ſhall

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So that, Gentlemen, here is a Paper in this Packet that has plainly laid open and proved the Deſign; and ſhews the Meaning of it was to ſeduce their Majeſties Subjects from their Allegiance: It was to be in ſuch general Terms, making general Promiſes; hoping thereby, that People would be the more eaſily impoſed upon, to renounce their Allegiance to their preſent Majeſties. But, Gentlemen, the Declaration imports farther, that the Realm was to be invaded by Foreigners; and to palliate it, it is pretended, that Foreigners were only brought in to rid the Nation of Foreigners; and you know who are meant by that: So that this Project was only to colour a Foreign Invaſion; and this Declaration was to direct them how, and upon what Pretences, they ſhould invade this Kingdom.

Gentlemen, there is no Manner of Doubt but this is a treaſonable Declaration; and if any Perſon had this in his Poſſeſſion, and was going into *France* to carry it, with an Intention there to make uſe of it, that is Treaſon, though it be couched under ſpecious Pretences, of reſtoring People to their Liberty: It was plainly a Deſign to invade *England* by a *French* Army.

L. Preſton. My Lord, that Paper was not found about me.

L. C. J. Holt. No, no, my Lord, it was not; but, good my Lord, give me your Favour. I will certainly obſerve every Thing that is fitting, but I tell you I cannot do it all at once.

Then, Gentlemen, there is another Paper found in the Pacquet, that is ſaid to be, The Reſult of a Conference, that was held between divers Lords and Gentlemen, as well Tories as Whigs, as they call them, to prove it poſſible to reſtore the late King by *French* Arms; and how this may be effected, were Propoſals made: Yet ſtill it was pretended to preſerve the Proteſtant Religion, and the Civil Adminiſtration, according to Law.

And, that it might be brought to paſs, the Credulous were to be impoſed upon, and made to believe that the *French* King would not conquer *England* for himſelf; no, but he would conquer it for the late King; he would be at that vaſt Charge, that great Expence of Men and Arms, to reſtore King *James*, and make no Profit of it himſelf.

And it was propoſed how to ſeduce the People of *England* into a Belief of the *French* King's Kindneſs: He was to indulge the Proteſtants in *France*, and let them have the Exerciſe of their own Religion there; and this to ſatisfy the *Engliſh* Proteſtants, That his Proſecution of the *Hugonots* in *France*, was not out of Averſion to the Proteſtant Religion, but only becauſe of their Antimonarchical and Reſiſting Principles: So that they were propoſing among themſelves what they were to do, to make the People believe the *French* King had no dangerous Deſign againſt our Religion and Liberties; and if they could meet with Perſons to believe this, that was a probable Way thought upon in this Conference, to get a great many Adherents to the *French* King; thereby this Invaſion to be facilitated, and the whole Project rendered more ſucceſsful. 1690. 2 W. & M.

There is another Thing, Gentlemen, in this Paper, and that is this: They complained of the Miſmanagement of their Affairs at St. *Germains*; that though they did earneſtly deſire the Reſtitution of the late King, yet there was always ſome fooliſh Thing or other that came from St. *Germains*, that obſtructed their Deſign.

What that fooliſh Thing is, I cannot ſay, it does not appear; but whether it were not too great a Diſcovery of their Zeal for Popery, and the Advancement of the Popiſh Religion, is worth your Conſideration.

And ſomething is to be done for Satisfaction of the People as to that; and it is adviſed, that there ſhould be ſeven or nine, or ſuch a Number of *Engliſhmen*, that ſhould go over, and be received into Favour at St. *Germains*, and they ſhould be of the Council there, and theſe were to be Proteſtants; and that was to be a Colour and Pretence, that the late King was reconciled to the Proteſtant Intereſt, becauſe he choſe Proteſtant Counſellors, and had received them at St. *Germains*, and was adviſed by them.

This, ſays the Paper, will make the World believe he is ours, and that we have gained him; which was to delude a great many of the People of *England*, that they ſhould not be affrighted, in caſe there ſhould be ſuch an Invaſion of *England*, but invited rather, and encouraged, to join with the *French* when they came.

But, Gentlemen, the three laſt Papers that have been produced to you, are Papers that do ſomewhat more nearly concern my Lord *Preſton*.

The firſt Paper contains ſeveral Memorandums: It begins with Lady *D.* 2000 *l.* who that Lady *D.* is, I muſt leave it for you to imagine; though perhaps it may not be hard to gueſs.

It takes Notice, that the *Engliſh* and *Dutch* were like to join; and theſe Memorandums do alſo ſhew a Deſign and Purpoſe of ſomething to be done for the Prevention of that Conjunction: They ſeem alſo to be Inſtructions to be made uſe of upon going into *France*, to negotiate or tranſact ſome Matters of dangerous Conſequence.

L. Preſton. My Lord, I hope your Lordſhip will obſerve, that theſe Memorandums are broken Kind of Notes, incongruous and incoherent.

L. C. J. Holt. Ay, my Lord, they are ſo, they are but broken Things; but I ſay ſtill, they are Memorandums, that were to be uſed for ſome Purpoſe: Now I leave it to the Jury to conſider of the Matter of them: What can be plainer than what is there expreſſed? The *French* are to come in Time, before the *Dutch* and the *Engliſh* join; they are to watch their Opportunity, and come betimes; and they are to fight at the Chops of the Channel, and not come as far as *Beachy*.

L. Preſton. This is all but preſumptive Evidence, my Lord.

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L. C. J. Holt. I appeal to your Lordſhip, if it was not in the Paper; and I appeal to the Memory of the Jury, whether I miſrepeat it or not.

The Paper mentions *Jennings*, *Strickland*, and *Trevannion*, that they were to come from St. *Malo*'s in one Night; the King (meaning the late King) was not to be on Board; and there were Ships to lie at *Newcaſtle*, to plague *London:* It is eaſy to underſtand what they meant. Among theſe Memorandums it is made a Remark, that the *London* Clergy are the worſt. It gives an Account how *Portſmouth* was fortified, and *Goſport*, and what Number of Men were in them; and of the State and Condition of our Navy, what Rates our Ships were, and how many, and who were to be the Commanders.

L. Preſton. I beg your Lordſhip to obſerve this is not Treaſon.

L. C. J. Holt. I ſhall tell you that, my Lord, by and by; I am now ſtating the Evidence.

Gentlemen, my Lord *Preſton* inſiſts upon it, that theſe Papers were not found about him: It is true, they were not; but it does not therefore follow, that they were none of his Papers; but you have three Witneſſes, Mr. *Townſend*, Mr. *Bland*, and Mr. *Warr*, produced to prove theſe Papers to be my Lord's Hand: Mr. *Townſend* ſays he was acquainted pretty well with my Lord *Preſton*'s Hand; he was one of his Clerks in the Office of the Wardrobe; He ſays, he has ſeen my Lord write ſeveral Times, and does believe the Writing to be his Hand; and to the ſame Purpoſe ſays *Bland*; and Mr. *Warr* ſwears to one of the Papers, that he believes it to be my Lord *Preſton*'s Hand.

L. Preſton. I hope your Lordſhip will pleaſe to obſerve to the Jury, that this is only a Proof of Similitude of Hands; no body ſaw me write them.

L. C. J. Holt. They only ſay, they do believe it to be your Hand; no body ſays they ſaw you write them: If I omit any Thing, pray tell me when I have done.

Gentlemen, there are other Papers which have been produced and read, that are writ in canting Terms; which yet plainly ſhew the general Deſign: They tell the Party, that Counſel are of Opinion, he has a very good Title: They hope he will appear himſelf; and, if the Cauſe be well ſollicited, it may come to a Hearing before the End of *Eaſter*-Term.

There is another Matter mentioned in another Letter, which is under the Diſguiſe of Trade: That the Goods muſt come before the firſt of *March*. And another of them ſays, That unleſs the Copper and the Linen come before the 10th of *March*, they ſhall loſe this Summer's Profit.

Gentlemen, what can be the Meaning of all this.

L. Preſton. I know not indeed, my Lord.

L. C. J. Holt. In another of the Papers, it is ſaid, 'Tis thought our Fleet will be ready by *March* or *April*; but they believe not till *June*.

Truly, Gentlemen, I have not been able to take Particulars of every Letter, but I muſt leave it to your Obſervation; only there is one of them that makes mention of acquainting my Lord with the Condition of the Writer; and Direction is therein given to ſpeak to the Bearer; and what other Lord was there, but he, in the Company?

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L. Preſton. I deſire to obſerve, my Lord, that I was not the Bearer.

L. C. J. Holt. Truly, my Lord, I cannot tell who was meant; I muſt leave it to the Jury to judge of that; but there was no other Lord in that Company.

L. Preſton. I give your Lordſhip Thanks for obſerving, that it was not proved that they were taken upon me before; but I beg Pardon for interrupting your Lordſhip.

L. C. J. Holt. Interrupt me as much as you pleaſe, if I do not obſerve right: I will aſſure you I will do you no Wrong willingly.

Now, Gentlemen, the Queſtion is, in the firſt Place, whether this be Treaſon? and I told you before, without Queſtion if any Perſons do go into *France* to negotiate ſuch a Deſign as this, or do purpoſe to go into *France*, and do any Act in order thereunto, that is High-Treaſon; and theſe Letters do import High-Treaſon as great as can be committed, a Treaſon againſt the King and Queen; a Deſign to invade the Realm, to ſubvert the Government, to reſtore another Prince to the Throne, by the Aſſiſtance of Foreign Force.

There was a Deſign to delude and impoſe upon a great many People; and thoſe that would not be deluded into a Belief by theſe fair Pretenſions of Friendſhip, they were to be ſubdued by an Army of Foreigners.

Then, Gentlemen, the next Queſtion will be, how my Lord *Preſton* is affected by this Evidence; and whether you have ſufficient Proof, from what has been offered, to ſatisfy you he is guilty of this Treaſon or no?

Firſt, my Lord tells you, there has not been a clear Proof that theſe were the Papers that were taken: For (ſaith he) they have been conveyed from Hand to Hand; and therefore poſſibly there might be ſome Alteration made in them. You, Gentlemen, are to conſider, notwithſtanding this Objection, whether the Identity of the Papers be not proved.

Captain *Billop* tells you, he took them, and in what Manner; and afterwards carried them to my Lord *Nottingham*, who laid them by for a little Time upon his Table; and Captain *Billop* withdrew, (that is Part of my Lord's Objection) while my Lord *Nottingham* examined my Lord *Preſton:* After that my Lord *Nottingham* called in *Billop* again, and *Billop* ſwears the Packet was not opened, but remained intire, in ſuch Manner as they were delivered to my Lord *Nottingham*; and ſo ſays my Lord *Nottingham*. Then Captain *Billop* ſaw my Lord *Nottingham* open it at that Time; and he ſaw all theſe Papers every one put up again by my Lord *Nottingham*, ſo that he could not be deceived; and my Lord *Nottingham* delivered them to him, and he carried them to my Lord Preſident, all ſealed up with my Lord *Nottingham*'s Seal; and my Lord Preſident tells you, he opened them, and brought them

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to the King, and had them back from the King; but they were never out of his Sight while the King read ſome of them; but he took them all, and brought them to the Cabinet Council, where my Lord *Sidney* received all theſe Papers that have been read, and marked them: You have my Lord *Sidney*'s Oath, that theſe are the Paper's he had from my Lord Preſident; you have my Lord Preſident's Oath, that he had them from *Billop*, ſealed with my Lord *Nottingham*'s Seal; you have my Lord *Nottingham*'s Oath, that he had them from *Billop*; and *Billop* ſwears they were taken in the Smack.

So that it is plain, if you believe this Evidence, that they are the ſame Papers: Beſides, as to ſeveral of them, *Billop* marked them, and ſwears directly to them: If you believe theſe Witneſſes, as you have no Reaſon, I think, to the contrary, it is plainly proved, theſe are the very Papers which were taken from the Boſom of *Aſhton*, and taken up by him from under the Quarter-Hatches in the Smack.

L. Preſton. I beg your Lordſhip's Pardon for one Thing.

L. C. J. Holt. My Lord, what ſay you, pray? Say what you will.

L. Preſton. With humble Submiſſion, there is one Thing that I think the Jury ought to take Notice of, That when the Papers were ſent from Mr. *Bridgman* to my Lord *Sidney*, they were ſent by a Meſſenger.

L. C. J. Holt. My Lord, you are miſtaken as to that Objection; for my Lord *Sidney* did not ſend them to Mr. *Bridgman* by a Meſſenger, but he delivered them with his own Hand; and after he had ſet his own Mark upon them: And Mr. *Bridgman* ſays, they were never out of his Sight; he copied them all, but two or three, the other Mr. *Pulteney* copied in his Preſence; and ſo he ſwears, he re-delivered them to my Lord *Sidney*.

L. Preſton. With humble Submiſſion, my Lord, if I remember right, they were in a third Hand.

L. C. J. Holt. Never, never.

L. Preſton. Did not my Lord *Sidney* ſay ſo, or Mr. *Bridgman*?

L. C. J. Holt. No; neither my Lord *Sidney*, nor Mr. *Bridgman* ſaid ſo: I ſuppoſe the Jury are apprehenſive of the Matter; I would not miſlead them, I'll aſſure you, nor do your Lordſhip any Manner of Injury in the World.

L. Preſton. No, my Lord, I ſee it well enough that your Lordſhip would not; I am for my Life, and beg your Lordſhip's Pardon for interrupting of you.

L. C. J. Holt. Gentlemen, the next Thing is to conſider, whether my Lord *Preſton* be anſwerable for theſe Papers, or a Party in this Treaſon.

Firſt, Gentlemen, I would have you to conſider, that there was the hiring of a Veſſel for *France:* It is true, my Lord *Preſton* was not preſent at the Bargain; but you obſerve that my Lord *Preſton*, his Servant, *Aſhton*, and *Elliot*, took Water at *Surry-Stairs*, on Purpoſe to go on Board that Smack.

Now, Gentlemen, whether or no you can intend any other ways, than that my Lord *Preſton* was privy in hiring this Veſſel, though he was not preſent at the hiring of it; for how ſhould my Lord *Preſton* be ready to take Water with them at *Surry-Stairs?* Can you imagine my Lord came there by Chance, and took a ſudden Reſolution? If you can imagine, that he came only to go on Ship-board, without knowing the previous Deſign, truly you imagine a very great Thing for my Lord's Advantage.

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It is plain, he went voluntarily, without Compulſion; truly, I think the Evidence is very ſtrong, to induce you to believe he was privy to this Deſign, and that he did know of hiring the Veſſel.

L. Preſton. I hope your Lordſhip will obſerve, at the ſame Time, that I was never ſeen before we took Boat.

L. C. J. Holt. My Lord, I have obſerved it, and I lay that Weight upon the Evidence that I think it will naturally bear, and no more; and leave it to the Jury to conſider, whether your Lordſhip was privy to the Deſign or no, when they weigh the Circumſtances of the Evidence together.

L. Preſton. I hope I ſhall not be condemned upon Preſumption and Argument.

L. C. J. Holt. What Weight the Evidence has, they will conſider: And then, Gentlemen, there is another Thing that I would obſerve; Why ſhould my Lord *Preſton*, a Nobleman, a Perſon of his Honour and Quality, put himſelf in ſuch a Place as he was found in, and that twice? It muſt ſure be out of an Apprehenſion of ſome Danger. As for the Sea-men, they were ſecure enough; they were not frightened, becauſe they thought they were protected, and my Lord *Preſton* knew he was not liable to be preſſed; the Maſter of the Veſſel tells you they were fearful, and therefore hid themſelves in a Place they could not ſtand in, nor ſit in; there was the Gravel and Ballaſt; it was uneaſy to them, and dangerous to their Health to be there.

Gentlemen, why do Men avoid the Light, and put themſelves under Covert, unleſs they have ſome evil Deſign? Perſons that are innocent, ſeek not Obſcurity.

The Seals were found there, and my Lord does not deny they were his Seals.

L. Preſton. I do not deny that: I hope it is no Crime to have ſuch Seals.

L. C. J. Holt. Ay, but ſays my Lord, that does not affect ---- becauſe the Papers were not found about me, but were found about *Aſhton*. Gentlemen, if you can imagine my Lord *Preſton* had a different Deſign from the reſt of the Company that were with him, then you may accquit my Lord, and find him Not Guilty: But it is left to you to conſider, whether he had not the ſame Deſign with them. Beſides, there is Mention made in one of the Letters of *my Lord*, and there was no other Lord but he; and here are Papers proved to be my Lord's own Hand, containing ſeveral of the Matters of which he ſtands indicted; and he would have had the Captain to have diſpoſed of the Papers.

Now, Gentlemen, what Account does my Lord give you, where he was going? It ſeems they did pretend at the Time they were taken,

and

1690. 2 W. & M. and they would have had the Maſter of the Veſſel ſaid, that their Deſign was for *Flanders*; but the Witneſſes tell you poſitively, that the Veſſel was hired for *France*.

Truly, Gentlemen, I muſt leave the Matter to your Conſideration, whether my Lord be guilty of this Deſign, or not guilty.

There is another Thing that my Lord has urged (for I would not willingly omit any thing material, on the one Side or the other); he ſays, his Indictment is laid in the County of *Middleſex*, but the Papers were not taken there; the Ship they went on Board lay at Anchor in *Surry*; and when they were taken, it was in the County of *Kent*, and ſo there is no Proof of Treaſon in *Middleſex*.

Ay, but, Gentlemen, give me Leave to tell you, if you are ſatisfied upon this Evidence, that my Lord was privy to this Deſign, contained in theſe Papers, and was going with them into *France*, there to excite an Invaſion of this Kingdom, to depoſe the King and Queen, and make uſe of the Papers to that End, then every Step he took, in order to it, is High-Treaſon, where-ever he went; his taking Water at *Surry-Stairs*, in the County of *Middleſex*, will be as much High-Treaſon as the going on Ship-board in *Surry*, or being found on Ship-board in *Kent*, where the Papers were taken.

Gentlemen, I have failed of recollecting ſeveral of the Particulars of this Evidence, becauſe they are many; and you will not depend upon my Recollection of things ſo very incoherent as ſome Parts of the Evidence in the Papers are, but upon your own Notes and Obſervations.

If you do think, having heard the Evidence that my Lord was not concerned in this Matter, that my Lord had no Deſign to go into *France* with theſe Papers, but that he was an utter Stranger to all theſe Things, then you are to acquit my Lord: But if you believe my Lord was privy to, and knew of the hiring of this Veſſel; and that he went to carry on the Deſign contained in theſe Papers, and that he wrote ſome of theſe Letters; and with the others he was acquainted, then you are to find him Guilty.

The Lord Chief Juſtice *Pollexfen* obſerved to the Jury, that my Lord *Preſton* had produced no Evidence of his Affection to the preſent Government, which would have been of ſome Weight in this Caſe: Adding, That if they ſuffered thoſe who were conſpiring againſt the Government, to do it with Impunity, they would do well to conſider what the Conſequence would be.

The Lord *Preſton* thereupon deſired he might have the Liberty of ſpeaking again, before the Jury went out: The Chief Juſtice anſwered, That was contrary to the Courſe of all Proceedings, to ſay any thing to the Jury after the Evidence was ſummed up; but for once they would permit it. 1690. 2 W. & M.

Then the Lord *Preſton* ſaid, He deſired the Jury might be informed he was a Proteſtant, baptized in the Religion of the Church of *England*, in which he always lived, and hoped to die in it; and obſerved, that Things had been urged againſt him with Severity; that they made that a Proof which amounted but to a Preſumption; as in the Caſe of the Letters that were written in a Cant, and his Intention of going to *France*; and thoſe Words in the Letter, *My Lord, the Bearer*, were applied to him; but that Letter was directed to no body, and as full of Cant Terms as any of the reſt; and why ſhould he be ſuppoſed to be the Bearer more than any of the reſt, eſpecially as they were found upon one of them? The Reaſon of his going beyond Sea was not to be wondered at; for though he had lived quietly after the Loſs of his Places, upon the Revolution, and ſuffered great Inconveniencies in his Eſtate, and was retired to his own Houſe, he was impriſoned twice in the *Tower*, and proclaimed a Traitor in every Market-Town, without any Indictment found againſt him: This made him uneaſy here, and occaſioned his Reſolution of going to *Flanders*, or to any Place where he could be quiet. *Lord Preſton permitted to ſpeak after the Directions to the Jury.*

The Chief Juſtice anſwered, If his Lordſhip thought himſelf hardly uſed, he muſt remember it was in a Time of Danger when he was taken up before, and when he had ſhewn his Diſaffection to the preſent Government; and the Government was not to be blamed for ſecuring itſelf againſt him: And, if he had a Mind to go abroad, was *France* the only Country he could chuſe; a Country at open War with us?

The Lord *Preſton* repeated it again, That he hoped the Gentlemen of the Jury would conſider all that was alledged againſt him was but Preſumption.

The Chief Juſtice replied, If he reflected on the Court, the Court would reflect upon him: He thought the Evidence had been ſtated very impartially; and the Evidence that had been given muſt have its due Weight and Conſideration: If any one could deſign innocently to go to *France*, at that Time of Day, with ſuch Papers, and in ſuch a Manner, he left to the Conſideration of the Jury.

The Jury then withdrew, and, returning within half an Hour, brought in the Priſoner GUILTY.

The Sentence, and Remarks on this Trial, will be found at the End of the next Trial of Mr. Aſhton.

1690. 2 W. & M. The Trial of JOHN ASHTON, Gent. for *High-Treaſon*, at the *Old-Baily*, *London*, on *Monday*, the 19th of *January*, 1690. 2 *W.* & *M.* 1690. 2 W. & M.

The Indictment. THE Priſoner was indicted and arraigned, together which Sir *Richard Grahme*, Lord Viſcount *Preſton*, and *Edmund Elliot*, Gent. for Compaſſing the Death of the King and Queen, conſpiring to raiſe a Rebellion, to procure an Invaſion of the Kingdom, and adhering to their Majeſties Enemies. *See the Indictment, in the Trial*

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Trial of the Lord Preſton *immediately preceding.*

Mr. *Aſhton* deſiring he might have Pen, Ink, and Paper, and a Solicitor to ſtand by him, and refreſh his memory, the Chief Juſtice allowed him Pen, Ink, and Paper; but ſaid, the other was an Innovation, the Court could not allow it.

Denied one to write for him, and aſſiſt him.

The Jurors being called, the Priſoner ſaid, He ſhould make no Challenges, but put himſelf upon the firſt Twelve in the Pannel; and accordingly the firſt Twelve were ſworn.

The Witneſſes for the Crown.

Then the Indictment and Evidence; were opened, and the Witneſſes called, and firſt Mrs. *Pratt* was ſworn, who depoſed, that Mr. *Aſhton* hired a Smack of her, to go to *France*, and to carry over two or three Gentlemen, who were Merchants, as was pretended, and going to fetch over Silk: That he agreed with her, at Mr. *Burdet*'s Houſe, for an 100 *l.* and the Money was paid on *Tueſday* Night, in Mrs. *Burdet*'s Bed-chamber, being ninety-three Guineas and Six-pence, and Mr. *Aſhton* broke the Six-pence in two Pieces, and gave one half, with the ninety-three Guineas, to Mrs. *Burdet*, and kept the other himſelf; and when the Maſter of the Veſſel brought the other half of the Six-pence to Mrs. *Burdet*, ſhe (*Pratt* the Witneſs) was to receive the 100 *l.*

That Mr. *Aſhton* gave her a Note to meet them the next Night at Mr. *Rigby*'s, the *Seven-ſtars* in *Covent-Garden*, and ſhe went thither about Ten o'Clock; and Mr. *Aſhton*, *Elliot*, and two other Gentlemen came in, and having ſtaid a little while, went away; but Mrs. *Aſhton* ſtaid at the *Seven ſtars*, and entertained her (the Witneſs) after they were gone: Said, ſhe hoped the Witneſs would not diſcover her Husband, and that God would deliver her out of the Lion's Mouth; and, upon the Cock's Crowing, Mrs. *Aſhton* ſaid, ſhe doubted they ſhould have no good Luck.

Mr. *Aſhton* demanding of Mrs. *Pratt*, If he ever ſpoke to her about going to *France?* ſhe anſwered, Yes; and ſaid, if ſhe helped them well away, they would help her to the earning 1000 *l.* before *Lady-Day*; and he asked her, if there was a Hole in the Veſſel to hide what he might have Occaſion to conceal.

Paſeley, he Maſter of the Smack, depoſed, That he was with Mr. *Aſhton*, in Mrs. *Burdet*'s Bed-chamber, when the 100 *l.* was paid; and that a Six-pence was broken, as Mrs. *Pratt* teſtified; one Part of which Mrs. *Burdet* kept and the other Mr. *Aſhton*; and when he (the Witneſs) brought back Mr. *Aſhton*'s half, the Owner was to have the reſt of the Money.

That he carried a Trunk and Hamper on Board, from Mrs. *Burdet*'s Houſe in *Queen-ſtreet*, and afterwards met the Company at the *Seven ſtars* in *Covent Garden*, took Boat with them at *Surry ſtairs*, and went on Board the Ship, over-againſt the *Tower*; from whence they ſailed down the River, and were all taken over-againſt *Graveſend*, (as he had depoſed at the Lord *Preſton*'s Trial) upon the Ballaſt under the Hatches, where they had concealed themſelves.

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Paſeley depoſed further, that they asked him, if he could carry them ſafe to *France*; and when they were brought back, one of them gave him half a Crown, and bid him ſay, they were bound for *Flanders*. That *Aſhton* and *Elliot* both asked, If there was a Place in the Ship to hide them in, and deſired, if they ſaw a Man of War's Boat coming on Board, they would tell them, that they might lie hid.

A Juryman demanding what was the uſual Rate for going to *Flanders*, with a Smack and three Men, *Paſeley* anſwered, twenty or thirty Pounds.

Betſworth, the Waterman, depoſed, He carried Mr. *Aſhton*, and the reſt of the Company, from *Surry-ſtairs*, on board the Smack, as he had teſtified in Lord *Preſton*'s Trial.

Fiſher, one of the Ship's Crew, teſtified, That Mr. *Aſhton*, and the reſt of the Company, came on Board between Elven and Twelve at Night; that they ſailed as far as *Graveſend*, and were taken by Captain *Billop*, and carried to *Whitehall*; and *Aſhton*, whiſpering him, bid him ſay, they were going to *Flanders*, and gave him half a Crown.

James Amonds, another of the Smack's Crew, depoſed, that they ſailed down the River, with Mr. *Aſhton*, and the reſt of his Company; and that Mr. *Aſhton* ſaid, If they took Care of them now, they (the Priſoner and his Company) would take Care of them hereafter, and help them to many a Pound: That after they were paſſed *Graveſend*, *Fiſher* was ſent down for the Victuals, and brought up ſome Roaſt-Beef, and other Things; and juſt as the Beef was going into the Cabbin, he (the Witneſs) gave them Notice a Barge was coming on Board to preſs, and they took the Victuals down, under the Quarter-Hatches, and there the Gentlemen lay, with the Victuals a-top of them, and Captain *Billop*, coming on Board, found them in this Condition; and when they were come up, the Captain put his Hand into Mr. *Aſhton*'s Boſom, and pulled out a Packet of Papers, with a Lead tied to them; after which they were commanded into the Captain's Boat, and all carried to *Whitehall*; and my Lord *Preſton*'s Man gave the Witneſs half a Crown, and ſaid, this will ſerve you to Night, and you ſhall be taken further Care of to morrow; only ſay you were bound to *Flanders*, and not to *France*.

Then Captain *Billop* teſtified, That on the laſt of *December* the Lord Preſident (the Marquis of *Carmarthen*) ſent for him, and told him there were ſeveral Perſons going to *France* with Papers of dangerous Conſequence, and ordered him to uſe his Endeavours for ſeizing them; and thereupon he (the Witneſs) armed a Boat at the *Tower*, and, about Eleven at Night, rowed down the River to *Graveſend*, where he refreſhed his Men, and then went down further, into the *Hope*; and judging that no Veſſel which came from *London* that Tide, could be a-head of him, he returned, and preſſed ſeveral Men in the Ships upon the River, and, among the reſt, ſome *Parking* Men; and ſeveral Smacks coming down the River

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My Lord, upon the whole, I have this to obſerve, firſt, as to my Buſineſs of going into *France*, I muſt ingenuouſly own it; though I proteſt to you, I never owned it, or named it, to the Woman, though ſhe hath ſworn it, but yet I do now. My Deſign was to go to *France* and I had very great and good Reaſon for it, I think; I had endeavoured, all Ways I could in the World to procure a Paſs to go to *France*; 'tis very well known I did Buſineſs under Lieutenant-General *Worden*, that died half a Year ago; his Accounts are now depending, and ſuch Accounts as may be prejudicial in ſome Points to his Family, to whom I have always owned and muſt, a great Obligation, and would be very glad, upon all Occaſions, to ſerve it, and all the Branches of it: This was not the whole nor only deſign I had in going thither, but I had likewiſe ſome Buſineſs of my own: I have a conſiderable Sum of Money owing me; if it be neceſſary to prove it, I can prove it by a Bond, from a Perſon that is there; a great Sum it is, a very conſiderable one to me at leaſt. And, my Lord, I did think if I did not go myſelf, it was impoſſible for me to do any thing in that Affair; and that was the true and only Reaſon of my Deſign in going to *France*, having been out of Hopes of getting any other Convenience otherways: This was not a Deſign juſt now formed, as if I were juſt now upon ſome Plot concerning the Publick, but it has been my Deſign ever ſince Lieutenant-General *Worden* died, and he upon his Death-Bead ingaged me to do it; and I once went down, hoping to have gone from *Dover*, and there I was apprehended and taken: And, my Lord, I have uſed all manner of Endeavours to go other ways, but they have always failed me, and this way I hoped would have taken. My Lord, I do own I did hire the Boat, and I did pay the Money; but, with Submiſſion, I think that is not any Manner of Treaſonable Act, my Lord. Perhaps it is an ill Act, but it does not amount in the Leaſt to Treaſon, going to the King's Enemies; ſuppoſe I went upon that Account, that is no manner of Treaſon in the World: Carrying Papers to the King's Enemies, except it be proved that I was privy to them, and knew the Contents of them, If Lawyers inform me right, is not Treaſon. Then what remains? 'Tis true, I muſt own the Papers were found upon me; and I believe there is no body that has heard the Evidence that has been given, but muſt readily conclude, that I found them in the Place where the Seaman ſays I took them up; and beſides, my Lord, there is not any manner of Proof, ſo much as aimed at by the King's Counſel in all their Evidence, that I was privy to any one of theſe Papers; ſo that, my Lord, I think there is very little proved upon me at all. I had the Misfortune to be taken in this Company, and where theſe Papers were taken it is true; but they have not attempted to prove that I was privy to, or knew any thing of them at all, nor that I was more concerned than that they were taken in my Stomack; this is all I have to obſerve upon the whole. As to the Buſineſs of the Indictment, there are great and grievous Aggravations in it, and ſuch as I am not able to comprehend the Meaning of; the Words confound me, and therefore I humbly deſire your Lordſhip to tell me, upon what Statute I am indicted.

L. C. J. Holt. I will tell you, Mr. *Aſhton*: You are indicted upon the 25th of *Edw.* III.

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Trial of the Lord Preſton *immediately preceding.*

Mr. *Aſhton* deſiring he might have Pen, Ink, and Paper, and a Solicitor to ſtand by him, and refreſh his memory, the Chief Juſtice allowed him Pen, Ink, and Paper; but ſaid, the other was an Innovation, the Court could not allow it.

Denied one to write for him, and aſſiſt him.

The Jurors being called, the Priſoner ſaid, He ſhould make no Challenges, but put himſelf upon the firſt Twelve in the Pannel; and accordingly the firſt Twelve were ſworn.

The Witneſſes for the Crown.

Then the Indictment and Evidence; were opened, and the Witneſſes called, and firſt Mrs. *Pratt* was ſworn, who depoſed, that Mr. *Aſhton* hired a Smack of her, to go to *France*, and to carry over two or three Gentlemen, who were Merchants, as was pretended, and going to fetch over Silk: That he agreed with her, at Mr. *Burdet*'s Houſe, for an 100 *l.* and the Money was paid on *Tueſday* Night, in Mrs. *Burdet*'s Bed-chamber, being ninety-three Guineas and Six-pence, and Mr. *Aſhton* broke the Six-pence in two Pieces, and gave one half, with the ninety-three Guineas, to Mrs. *Burdet*, and kept the other himſelf; and when the Maſter of the Veſſel brought the other half of the Six-pence to Mrs. *Burdet*, ſhe (*Pratt* the Witneſs) was to receive the 100 *l.*

That Mr. *Aſhton* gave her a Note to meet them the next Night at Mr. *Rigby*'s, the *Seven-ſtars* in *Covent-Garden*, and ſhe went thither about Ten o'Clock; and Mr. *Aſhton*, *Elliot*, and two other Gentlemen came in, and having ſtaid a little while, went away; but Mrs. *Aſhton* ſtaid at the *Seven ſtars*, and entertained her (the Witneſs) after they were gone: Said, ſhe hoped the Witneſs would not diſcover her Husband, and that God would deliver her out of the Lion's Mouth; and, upon the Cock's Crowing, Mrs. *Aſhton* ſaid, ſhe doubted they ſhould have no good Luck.

Mr. *Aſhton* demanding of Mrs. *Pratt*, If he ever ſpoke to her about going to *France?* ſhe anſwered, Yes; and ſaid, if ſhe helped them well away, they would help her to the earning 1000 *l.* before *Lady-Day*; and he asked her, if there was a Hole in the Veſſel to hide what he might have Occaſion to conceal.

Paſeley, he Maſter of the Smack, depoſed, That he was with Mr. *Aſhton*, in Mrs. *Burdet*'s Bed-chamber, when the 100 *l.* was paid; and that a Six-pence was broken, as Mrs. *Pratt* teſtified; one Part of which Mrs. *Burdet* kept and the other Mr. *Aſhton*; and when he (the Witneſs) brought back Mr. *Aſhton*'s half, the Owner was to have the reſt of the Money.

That he carried a Trunk and Hamper on Board, from Mrs. *Burdet*'s Houſe in *Queen-ſtreet*, and afterwards met the Company at the *Seven ſtars* in *Covent Garden*, took Boat with them at *Surry ſtairs*, and went on Board the Ship, over-againſt the *Tower*; from whence they ſailed down the River, and were all taken over-againſt *Graveſend*, (as he had depoſed at the Lord *Preſton*'s Trial) upon the Ballaſt under the Hatches, where they had concealed themſelves.

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Paſeley depoſed further, that they asked him, if he could carry them ſafe to *France*; and when they were brought back, one of them gave him half a Crown, and bid him ſay, they were bound for *Flanders*. That *Aſhton* and *Elliot* both asked, If there was a Place in the Ship to hide them in, and deſired, if they ſaw a Man of War's Boat coming on Board, they would tell them, that they might lie hid.

A Juryman demanding what was the uſual Rate for going to *Flanders*, with a Smack and three Men, *Paſeley* anſwered, twenty or thirty Pounds.

Betſworth, the Waterman, depoſed, He carried Mr. *Aſhton*, and the reſt of the Company, from *Surry-ſtairs*, on board the Smack, as he had teſtified in Lord *Preſton*'s Trial.

Fiſher, one of the Ship's Crew, teſtified, That Mr. *Aſhton*, and the reſt of the Company, came on Board between Elven and Twelve at Night; that they ſailed as far as *Graveſend*, and were taken by Captain *Billop*, and carried to *Whitehall*; and *Aſhton*, whiſpering him, bid him ſay, they were going to *Flanders*, and gave him half a Crown.

James Amonds, another of the Smack's Crew, depoſed, that they ſailed down the River, with Mr. *Aſhton*, and the reſt of his Company; and that Mr. *Aſhton* ſaid, If they took Care of them now, they (the Priſoner and his Company) would take Care of them hereafter, and help them to many a Pound: That after they were paſſed *Graveſend*, *Fiſher* was ſent down for the Victuals, and brought up ſome Roaſt-Beef, and other Things; and juſt as the Beef was going into the Cabbin, he (the Witneſs) gave them Notice a Barge was coming on Board to preſs, and they took the Victuals down, under the Quarter-Hatches, and there the Gentlemen lay, with the Victuals a-top of them, and Captain *Billop*, coming on Board, found them in this Condition; and when they were come up, the Captain put his Hand into Mr. *Aſhton*'s Boſom, and pulled out a Packet of Papers, with a Lead tied to them; after which they were commanded into the Captain's Boat, and all carried to *Whitehall*; and my Lord *Preſton*'s Man gave the Witneſs half a Crown, and ſaid, this will ſerve you to Night, and you ſhall be taken further Care of to morrow; only ſay you were bound to *Flanders*, and not to *France*.

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L. C. J. Holt. I will tell you, Mr. *Aſhton*: You are indicted upon the 25th of *Edw.* III.

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for Conſpiring, Compaſſing, and Imagining the Death of the King and Queen, and for that Purpoſe going to *France*, and endeavouring to incite the *French* King to invade the Kingdom, and telling him how he ſhould do it; and letting him know in what State and Condition the Kingdom was, and how fit to be invaded.

Mr. *Aſhton*. Pray, my Lord, is that all proved upon me?

L. C. J. Holt. That is the Queſtion the Jury is to judge of, upon the Evidence that has been given.

Mr. *Aſhton*. As to that of Compaſſing the Death of the King and Queen, I am ignorant of Dealings in Law; but I conceive there are ſeveral Species of Treaſon mentioned in that Act of the 25th of *Edw.* III. and as to the Imagining the Death of the King, that is only to be proved by ſome Overt-Act: Now, I think, nothing at all has been proved of any open Act, conducing to prove the Imagining or Compaſſing the Death of the King or Queen; no Manner of Conſultation or Treaſonable Act at all; and therefore, my Lord, I do not ſee that there is any great Matter that is proved upon me; and I hope you are of that Opinion too.

L. C. J. Holt. Mr. *Aſhton*, that you may not go away with a Miſtake, any Perſons that deſigned the Depoſition of the King and Queen, and the Invaſion of the Kingdom, which is proved by an Overt-Act, this is ſufficient to prove that they compaſſed and imagined the Death of the King and Queen.

Mr. *Aſhton*. I preſume it may be ſo; I believe that may be the Conſtruction of the Law.

L. C. J. Holt. And I make no Queſtion, but thoſe that you have conſulted with have told you as much.

Mr. *Aſhton*. Truly, as to Counſel, my Trial has been as hard as ever Man met withal.

L. C. J. Holt. Why do you ſay ſo, Mr. *Aſhton*? the Court has not been hard upon you.

Mr. *Aſhton*. My Lord, I do not complain of the Court; but as to the Matter of Time: I had Notice by that Gentleman, Mr. *Bale*, to prepare for my Trial, and that was on *Friday*, and not before.

L. C. J. Pollexfen. *Friday* was Seven-night, you mean, I ſuppoſe.

Mr. *Aſhton*. Yes, I do mean *Friday* was Seven-night: I was then a cloſe Priſoner, I had not the Opportunity or Liberty of ſeeing any Chriſtian Soul: I ſpake to him then, and told him, Mr. *Bale*, this is very ſhort Notice; pray be ſo kind as to move my Lord that I may have Counſel: Truly, he was civil enough, and ſaid, he would do all he could. Says he, Will you give me the Names of your Counſel? So I gave him the Names of four, and of a Solicitor, but I never heard more of him in the Matter. I did, with all my Induſtry and Skill, give my Friends Notice; but I was under great Difficulty; for I had not the Liberty of Pen, Ink, or Paper, nor a Man to ſend upon a Meſſage: On *Saturday* I gave my Friends Notice of it; on *Sunday* (which was no very good Day for Buſineſs) they applied themſelves to my Lord *Sidney*, whoſe Favour and Kindneſs I ſhall always own as long as I live: He gave me all the Diſpatch poſſible, and got me an Order to ſee my Wife that Day, though it was *Sunday*: The next Day I made Application to have my Counſel come to me; that was *Monday*. He, with the ſame Readineſs procured that; but it was *Tueſday* in the Afternoon before I could ſee any living Soul but my Wife; and ſome of the Counſel that I deſired, would not readily come to me, and it was *Wedneſday* before I did ſee any of them; and ſo I had but *Wedneſday* and *Thurſday* to conſult with them in. On *Friday* I was brought here, and I endeavoured to procure a Copy of the Pannel, that I might inform myſelf of the Characters of the Men that were to be my Jury; and, my Lord, I would deſire you to give me leave to clear one Point, which, through Inadvertency, ſlipt from me, about the Time that I deſired to ſend to enquire about the Jury. I did not mean, as was apprehended, to ſend to them to take them off, but I only meant to enquire after their Characters: This was done upon *Friday*; I had not a Copy of the Pannel till laſt *Friday*, when we were arraigned in Court; it was two o' Clock before the Pannel was given us; it was between Three and Four when we came to *Newgate*; we were to come upon our Trial the next Morning by Eight o' Clock: So that, before the Copies could be tranſcribed for us, there were left but ſix Hours for us to enquire into the Morals of ſo many Men; of whom ſome live eight, ſome ten, ſome fifteen Miles out of Town: For my Part, I was not able to enquire after any one; that your Lordſhip may think, by my taking the firſt Twelve that appeared, and believing myſelf innocent of this Matter, I reſolved to put myſelf upon my Trial by any twelve indifferent *Engliſh* Men. I only beg, if I have omitted any Thing in Reference to myſelf, or misbehaved myſelf with Reſpect to the Bench, that you would pleaſe to ſet me right, and conſider that I ſtand here for my Life; and to grant me your Pardon for any Thing wherein I have offended your Lordſhips, to whom, and to the Jury, I refer my Cauſe; only I beg leave to call two or three Witneſſes, I know it has been before allowed in ſuch Caſes, to give ſome ſhort Account of my Life and Converſation; becauſe it hath been reflected upon me that I was a Papiſt, becauſe I deſigned to go into *France*: But, I believe, there is not any Man whoſe Devotion to the Proteſtant Religion, eſtabliſhed by Law, is greater than mine hath been, or to whom that Religion is dearer than to myſelf.

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Then Mr. *Aſhton* called ſome People to his Character; and firſt Dr. *Fitz-Williams* appeared, and teſtified, that Mr. *Aſhton* conſtantly attended Divine Service at Church, and received the Sacrament about half a Year before; but being asked, Whether this was before the Prayers were altered? he could ſay nothing to that.

Dr. *Lake* teſtified, That Mr. *Aſhton* was a Man of exemplary Piety, and had ſhewn an extraordinary Zeal againſt Popery.

Other

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Other Witneſſes alſo gave him a good Character.

The Chief Juſtice demanding, Why he uſed ſuch Importunity to have the Papers thrown over-board, and why he deſired Captain *Billop* to go with them? Mr. *Aſhton* thanked his Lordſhip for reminding him of theſe Things, and ſaid, Whatever his Fate was, he muſt own he had had a fair Trial for his Life.

That he did indeed deſire Captain *Billop* to throw the Packet over-board, for the Sake of his Friend, the Lord *Preſton*, who was uneaſy, he obſerved, at their being taken; but he did not remember he deſired Captain *Billop* to go with them.

L. C. J. Pollexfen. As to what you have offered to prove you a Proteſtant, no body queſtions it; all that are concerned in this Matter are ſuch; for the whole Deſign ſhews, they were all ſo careful of the Proteſtant Religion, that they deſigned to reſtore and eſtabliſh it by the *French* King's Power. Conſider, Mr. *Aſhton*, the Difficulties you have to get over: Firſt, you ſay you went over upon your own Account; then that you hired the Veſſel for you and *Elliot:* Why would you have *Elliot* go with you into *France?*

Aſhton. He deſired to go; I did not ask him.

L. C. J. Why would you have Lord *Preſton* go with you?

Aſhton. I thought to have got my Paſſage free, with a Perſon of his Lordſhip's Quality.

L. C. J. Then you hired the Veſſel for my Lord *Preſton.*

Aſhton. No, my Lord.

L. C. J. Was it my Lord's Money, or your own, that you paid?

Aſhton. I paid the Money; but how I ſhould be repaid I could not tell.

L. C. J. Would you pay 100 *l.* for a Boat to go to *France* for your own Convenience, and yet hope to get your Paſſage free by taking in my Lord *Preſton?*

Aſhton. I cannot tell how it would have been; but, at the worſt, we could but have paid our Shares.

L. C. J. But you can tell, if you will, how it was agreed amongſt you.

Aſhton. As I hope to be ſaved, I cannot tell.

L. C. J. But why did you deſire the Seamen to ſay you were going to *Flanders* and not to *France?*

Aſhton. Your Lordſhip knows it is a Fault to go to *France*, though it do not amount to High Treaſon.

L. C. J. Why did you aſk the Maſter of the Veſſel for a convenient Place to hide in?

Aſhton. Becauſe I know many had been ſtopped going to *Flanders*, though they had Paſſes.

Then the Lord Chief Juſtice *Holt* gave the following Directions to the Jury:

The Chief Juſtice's Directions to the Jury.

L. C. J. Holt. Gentlemen of the Jury, you underſtand that Mr. *Aſhton* is now tried for High-Treaſon; it is mentioned in the Indictment to be for conſpiring the Death, and depoſing the King and Queen; and, for that purpoſe, he did endeavour to go into *France*, and to carry divers Propoſals in Writing, and ſeveral Memorials, to ſhew how this Kingdom might be invaded by the *French.*

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To prove this, the Evidence produced and given by the King's Counſel has been long, and conſiſts of two Parts; 1ſt, Witneſſes *Viva Voce*; they have told you how Mr. *Aſhton* deſigned a Voyage to *France*; and, That he hired a Ship for that purpoſe, and ſeveral Papers were taken out of his Boſom.

In the firſt Place, the Witneſſes tell you, That about the latter End of *December* laſt, Mr. *Aſhton* and Mr. *Elliot* came to *Burdet*'s Houſe, where they met with Mrs. *Pratt*, and *Burdet* having before that ſpoken to her about a Smack that ſhe called the *Thomas and Elizabeth.*

Then there was a Meeting appointed between her and Mr. *Aſhton*, at the *Wonder-Tavern*, where they did treat and debate about the Hire of it; afterwards they came back to *Burdet*'s again, and there the Agreement was made between the Woman and Mr. *Aſhton*, the Priſoner at the Bar, to have one hundred Pounds. Ninety-three Guineas and Six-pence were fetched down by Mr. *Aſhton*, and told out, and depoſited in the Hands of Mrs *Burdet:* Then there was a Six-pence broken, and one Part Mrs. *Burdet* had, and the other Part Mr. *Aſhton* had; and when either the Maſter, or Mrs. *Pratt*, ſhould bring the Part of the Six-pence that Mr. *Aſhton* kept to Mrs. *Burdet*, the hundred Pounds were to be paid.

And this Agreement being made, it is poſitively ſworn, that they did ask, Whether there was a hiding Place in that Veſſel? An Anſwer was made, there was one; and thereupon a Note was given, that the Maſter and Mrs. *Pratt* ſhould go to the *Seven-Stars* in *Covent-Garden.*

Upon *Wedneſday* Night they went there, according to the Direction, where they met *Aſhton* and *Elliot:* But before that there was a Boat hired at *Surry-Stairs*, to carry them down to the Ship through Bridge over-againſt the *Tower*; but the Tide not ſerving till about ten o' Clock at Night, they had agreed with a Waterman for half a Crown to carry them, and he was to ſtay till the Tide ſerved. And when they went out of *Rigby*'s they parted; *Elliot* and the Maſter went together; Mr. *Aſhton* did not go with them, but came near about the ſame Time to *Surry-Stairs*, where they took Water.

Being aboard, it was obſerved that all theſe Gentlemen were very timorous, and ſeemed to be much frighted at the Sight of any Veſſel, from which there was any Apprehenſion of their being taken Notice of, and therefore they went down under the Quarter-Hatches, which is a Place very inconvenient for ſuch Perſons, where none could ſtand or ſit upright, but they were forced to lie upon the Boards or upon the Ballaſt.

It ſeems ſome Intimation was given, that ſome Gentlemen had an Intention to go into *France*, to proſecute ſome Treaſonable Deſign; and Captain *Billop* being imployed to purſue them, which he did in a Pinnace, when he came near the Veſſel where they were, he called to the Veſſel, and under Pre-

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tence of preſſing Sea-men, he went on Board: The Maſter of the Veſſel ſaid, he had a Protection from the Admiralty, ſo that there was no Cauſe for them to fear preſſing; nor indeed was there any for Gentlemen to fear it, they being not liable to be preſſed.

When the Captain came near the Ship, and declared his Intent of coming on Board, theſe Gentlemen were gone under the Quarter-Hatches again; Captain *Billop* coming on Board, and ſpeaking about preſſing of the Men; and ſaying there was a Couple that would make good Seamen for the King, the Maſter ſhewed his Protection; and then the Captain, ſaid, he would ſearch further in the Ship, and ſo he did; and then he pulls up the Boards, and there he finds all theſe Gentlemen, who were called up one after another, and ſearched by the Captain.

Gentlemen, there is one of the Witneſſes tells you, that when they were come up, he ſaw a Packet that lay in this very Place under the Quarter-Hatches, unto which was tied a Piece of Lead, which Mr. *Aſhton* takes up, and puts in his Boſom; with which the Captain being acquainted, Enquiry is made by him, What Mr. *Aſhton* had there? Mr. *Aſhton* ſaid it was his Handkerchief, and nothing but that which he pulled out: But Captain *Billop* put his Hand into his Boſom between his Coat and his Body, and takes out the Packet, and carried theſe Gentlemen on Board the *George* Frigate, where they ſtayed till the Tide ſerved to bring them to *Whitehall*.

But before they came on Board the Frigate, Mr. *Aſhton* was very importunate with him to throw hisPacket into the Water: When they were on Board the *George* Frigate, and in the Cabbin alone, they continued their Importunity.

Now, ſay they, we have you here, and you are alone, pray will you throw this Packet over-board? And particularly Mr. *Aſhton* ſaid, It would do the Captain no Good to injure ſo many Gentlemen; and Mr. *Elliot* would have perſuaded the Captain to take the Lead that was tied to the Packet, and tie it to ſome Letters that were taken out of my Lord *Preſton*'s Pocket, and throw the Packet over-Board; and then have informed the King and Council, that thoſe Letters compoſed the Packet taken out of Mr. *Aſhton*'s Boſom: But the Captain very honeſtly rejected all their Motions of that Kind.

Truly, Gentlemen, my Memory will not ſerve me, to repeat all the Particulars; but I queſtion not your Notes will bring them to your Minds. Mr. *Elliot* it ſeems, was ſo mightily concerned at their being taken with theſe Papers, that when they ſhot *London-Bridge*, he wiſhed the Bridge might have fallen upon them, and knocked them on the Head; and when they were got through, he wiſhed a Thunder-bolt would fall down into theBoat and ſink them: That indeed was Mr. *Elliot*, and not Mr. *Aſhton*; but Mr. *Aſhton* was as much concerned about diſpoſing of the Packet as Mr. *Elliot*.

At *Whitehall* this Packet is opened; and you have ſeveral Papers produced in Evidence, and read to you: You have heard what Evidence has been given, that theſe are the very Papers that were in the Packet thus taken.

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Firſt of all, Captain *Billop* tells you, he carried them to my Lord *Nottingham*; and that they lay there in his Office: He withdrew, indeed, while my Lord *Nottingham* examined my Lord *Preſton*; but the Packet was not opened in the Interim, but there was only a Paper ſtuck on the Out-ſide, that my Lord had taken off before the Captain returned into the Room, and there the Packet remained intire: He ſays my Lord *Nottingham* opened the Packet, and put up all the Papers that were in the Packet in his Preſence into a Cover again, and ſealed them up with his Seal. My Lord *Nottingham* ſays poſitively, He did put up all the Papers that were in the Packet again; all, and no more, except the Cover, and that he ſealed up, and delivered it to Captain *Billop*.

Captain *Billop* ſays, He took theſe very Papers from my Lord *Nottingham*; and, as he received them, carried them without opening to my Lord Preſident.

My Lord Preſident ſays, He locked them up, unopened, in a cloſe Cabinet in his Cloſet, a Room where no Body comes; there they were that Night, and the next Day he carried them intire to the King; and ſome of them were read by the King, in the Preſence of my Lord Preſident, and they were all taken away by his Lordſhip, no more nor no leſs; and my Lord Preſident brought them all to the Cabinet Council, where they were read, and were delivered to my Lord *Sidney*. My Lord *Sidney* ſwears, theſe Papers now produced are the ſame Papers he had from my Lord Prefident; and my Lord Preſident ſwears that they are the ſame he received by *Billop* from my Lord *Nottingham*, and my Lord *Sidney* marked them.

So that there can remain no Doubt of theſe being the ſame Papers that were contained in the Packet, that was taken out of the Boſom of Mr. *Aſhton*.

Then, as to the Matter of the Papers, I think it is plain, beyond all Contradiction, that the Import of them is Treaſonable: They ſhew a Deſign of invading the Kingdom by a Foreign Force, of depoſing the King and Queen from the Government, and of ſetting the late King upon the Throne.

It is agreed, as it is mentioned at a Conference between ſeveral Noblemen and Gentlemen, that were of the Whig and Tory Party, as they call them, that the late King was to be reſtored, though by a *French* Power.

It was impoſſible for them to effect it, by going plainly to Work, and ſaying in plain Words, the *French* ſhould invade us: It was to be done in this Manner.

The *French* King muſt pretend by all Means to be our Friend, and a Mediator betwixt the lateKing and thePeople of *England*; and this was out of a Deſign, plainly, to get a Party of the Kingdom to join with them, the moſt credulous and inconſiderate Sort of People; who, when they ſhould be ſeduced into a Belief of the *French* King's greatKindneſs,

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ness, it was not doubted, but there would be a Conjunction between them and the *French* Forces to restore the late King.

And to procure such a Persuasion in the People, the *French* King was to shew himself kind to the *English* Protestants, to appear and act another part than he had formerly done; he was to permit them the Exercise of the ProtestantReligion; thereby to persuade many, that his Prosecution of his own Subjects the *Hugonots*, was not out of any Aversion to the Protestant Religion, but only to their Antimonarchical and Resisting Principles.

Then an Inconvenience is to be removed; for they complain that they are too full of Bigotry at St. *Germains*, and too bare-faced: For they make an open Profession of Popery, and speak truly what they do intend; but, say they, if they will have the Design take Effect, they must be more close and secret; for the Folly and Bigotry of St. *Germains* was a very great Obstruction: Therefore they proposed that some Persons might be substituted as Agents to correspond here, that understood the Temper of the Nation, and what would most easily prevail with the People: And a Model was to be framed at St. *Germains*; the Protestants are to be seemingly caressed, seven or nine to be of the late King's Council, that so we might believe that he was ours in Interest again, and that we have a Relation to him.

And, if Things were carried with such Cunning and Subtilty, they hoped to delude a great many People over into the Interest of the late King; but, if they went bare-faced, it would cause such great Jealousies, that they must totally despair of Success.

Yet they did not hope, by these Artifices, to obtain so many Friends here, as might have been sufficient to accomplish their Design; and therefore they must have Recourse to a Foreign Force, particularly a *French* Force: For says one of the Papers, *Use Foreigners to expel Foreigners*; that is, use *French* to expel *Dutch* Foreigners, who are our Allies, and are falsly accused by them to have trampled upon the Rights and Liberties of the Nation.

There is one Argument used to encourage People to assist the *French* in the Invasion of their own Country, which I cannot omit; namely, That as soon as the *French*, with a considerable Expence of Men and Money, had restored the Protestant Religion, the late King to the Crown, and the People to their Liberties, that he would withdraw all his Forces, and reap no Profit or Advantage by his Success. I must confess, this carries so little of persuasion in it, that it is ridiculous to think thereby to impose upon any Number of Men: But notwithstanding the Weakness of their Arguments, it is apparent, they were in good Earnest; the Papers give an Account to the *French*, in what State and Condition our Forts were, *Portsmouth* not manned with above 500, and *Gosport* how weakly fortified.

It was a happy Juncture between this and the first of *March*, when Advice is given to make use of the Opportunity: For Men cannot give, but Men may use Opportunities; and something was to be done forthwith, and the Goods must be got in readiness, particularly Linen and the Copper are mentioned, which are mysterious and dark Expressions; and you may put a Construction upon them as well as I: For they are written in a Style of Trade, as if there were a Correspondence between two Tradesmen; and the Linen and Copper are ordered to be brought before the 10th of *March*.

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But however obscure some of these Expressions are, there are others that are more plain: That the *French* Fleet must be out in *April* at fartherst; and are to come before the Conjunction between the *English* and the *Dutch*; and *Jennings*, *Strickland*, or *Trevannion*, are to come from St. *Malo*'s in one Night, and to fight the *English* Fleet in the Chops of the Channel; and not to come so high as *Beachy*, where they came the last Year.

And there is an Account given, in what Condition and State our Navy was, how many Ships, what Rates, how manned, and who the Officers; and then as the *French* were to be in Readiness to come in *April*, so they say our Fleet was not to be out till *June*.

Gentlemen, there are a great many other Particulars; but these are enough, nay half of them were enough, to make any Man guilty of Treason, that was concerned in them, or that had a Hand in carrying or making use of them.

Besides, there are other Letters, which can import nothing, but the Writer was of the late King's Interest; one directed to Mr. *Redding*, the other to Mrs. *Redding*; and these were to go to *France*, to let them know how zealous he was in his Duty, and how the Interest of the young Master increased. The Letters have these Expressions: That *though the Family were decreased, yet our Interest is increased, which is yours; and I speak in the Plural Number, because I speak the Sentiments of my dear Brother, and the rest of our Relations; and desire them to believe they were zealous and cordial in their Duty to Mr.* Redding. Now what Interpretation you will make of this, I'll leave to you.

Then there is another Letter directed to Mrs. *Charlton*, and another to Mr. *Jackson*, and divers other Things that have been read; and, amongst the rest, have been read the Heads of a Declaration at large, shewing what should be done, and what Methods should be taken, in order to the restoring the late King, and deposing this.

And there is also Mention made in a Paper, how divers Persons, who were to be pardoned, as particularly, all Justices of the Peace, actually in Commission, are not to be excepted; Out-laws are to be pardoned; Chimney-Money to be taken away; and all that come in within Twenty-one Days are to be forgiven.

So that it is plain, these Letters import a Design to depose the King and Queen, and the Kingdom to be invaded by Foreigners; only a little to colour the Matter, nor to lose the pretence of a ProtestantInterest altogether, there was to be five or six thousand *Swedes* to be made use of in the Invasion.

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Gentlemen, if there was a Deſign of an Invaſion, be it by Papiſts or by Proteſtants; if any Act was done tending thereunto, it is High-Treaſon, within the Statute of 25 *Edw.* III. For purpoſing and intending to depoſe the King and Queen, manifeſted by any Overt-Act, hath always been held to be High-Treaſon.

This, Gentlemen, is the Sum and Subſtance of the Evidence that has been given againſt the Priſoner at the Bar.

Mr. *Aſhton* ſays for himſelf, It is true, ſaith he, my Deſign was to go to *France:* I was ſo unfortunate as to have the Papers taken about me: I did take them up; but, ſays he it is not at all proved, that any one of the Papers that are now produced, are my Hand; which is true: There is no ſuch Proof.

The next Thing is, that Mr. *Aſhton* being asked, What Occaſion he had to go to *France?* he ſays, He had formerly a Relation to Colonel *Worden*, and did tranſact, and had the Management of his Affairs, which were very great. Colonel *Worden* died half a Year ago; and he injoined him, upon his Death-Bed, to go into *France*, about ſettling ſome Accounts of his; and he was deſired by the Family of Colonel *Worden* ſo to do.

This Mr. *Aſhton* alledges; but he has not proved it. 'Tis very ſtrange, that if Mr. *Aſhton* was to go to *France* to negotiate that Affair for Colonel *Worden*'s Family, none of that Family ſhould be produced to prove, that Colonel *Worden* gave him ſuch Directions; or that the Family deſired him to go into *France* upon that Account.

Then Mr. *Aſhton* hath endeavoured to give another Reaſon for his Voyage into *France:* He affirms, he had ſome Affairs of his own, with Relation to the late Queen; he was concerned for her, and ſhe did owe Monies here, and he paid ſeveral Debts to Tradeſmen, particularly 400 *l.* ſhe owed to the Coach Harneſs Maker; and he having paid it, went over to reimburſe himſelf: The Tradeſman was produced; and he ſays, Mr. *Aſhton* did pay the Money a Year ago; but whether Mr. *Aſhton* had Effects from the late Queen, or paid it out of his own Pocket, does not appear; Mr. *Aſhton* ſays, he paid it out of his own Pocket, which is very extraordinary, that he ſhould be ſo kind to pay what he was not obliged to pay, and have no Security to reimburſe himſelf.

So that, Gentlemen, you had beſt conſider, whether there be any thing at all ſaid or proved, that can juſtify Mr. *Aſhton*'s going to *France*; or whether there be any good Reaſon offered for it.

Then *Aſhton* has called Witneſſes to prove, that he was always a Proteſtant, though he did live in a Popiſh Family, where they did encourage Papiſts, and diſcountenance Proteſtants; for which he had the ill Will of thoſe he did depend upon.

Gentlemen, all that is agreed; and it is not a Queſtion in this Caſe, Whether Mr. *Aſhton* be a Proteſtant or a Papiſt? But the Queſtion is, Whether he be guilty of High-Treaſon? from which the being a Proteſtant does not ſecure a Man.

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But, Gentlemen, if Mr. *Aſhton* had no Knowledge, upon what Deſign the other Perſons were to go into *France*, though he had actually gone into *France*, it had been a Crime in this Juncture of Affairs, yet not High-Treaſon; but to go into *France*, and carry a Treaſonable Scheme of a Deſign, and Project of an Invaſion, That is Treaſon.

Now the Queſtion is, Whether Mr. *Aſhton* went with ſuch a Purpoſe, or not? You are to conſider: I would not lead you into any Strain of the Evidence, but only ſtate it how it ſtands. It is plain, he was concerned all along in hiring the Smack; and, as the King's Counſel obſerved to you, the Price was ſomething extraordinary, they were to pay 100 *l.* for the Voyage; to which was added ſome Encouragement for the Woman, that if ſhe performed this Voyage well, ſhe might get 1000 *l.* before *Lady-Day*; and the Money was paid by Mr. *Aſhton*, and he was taken aboard the Veſſel.

Mr. *Aſhton* was much concerned to ſecure the Papers, by taking them out of the Place where they lay upon the Ballaſt, under the Quarter-Hatches; and after they were taken out of his Boſom, he was very importunate, and ſo often, with Captain *Billop*, to throw them over-board. And why ſhould he be ſo earneſt, and concerned, unleſs he very well knew, and was acquainted with the Contents of thoſe Papers?

And he gave one of the Seamen half a Crown, to ſay they were bound for *Flanders:* Unleſs it was a Matter of great Importance he went about, and that was not fit to be known, why ſhould he deny it, or labour to have it concealed? An hundred Pounds to be paid for this Voyage, was upon a Joint Account, as well for my Lord *Preſton*, as for Mr. *Aſhton* and *Elliot*; Mr. *Aſhton* did pay the Money, and he does not make it appear whoſe it was.

Gentlemen, it reſts upon you to conſider the Evidence you have heard, whether it is ſufficient to induce you to believe, Mr. *Aſhton* was going into *France* with theſe Papers, to carry on the Deſign of depoſing the King and Queen, and invading the Kingdom. If you are not ſatisfied in you Conſciences, that he is Guilty, then find him Not Guilty: On the other Side, if you are ſatisfied that he is Guilty, I do not queſtion, but you will find him ſo.

L. C. J. Pollexfen, Look you, Gentlemen of the Jury, my Lord has rightly repeated and ſtated the Evidence to you; I ſhall only ſay but a very few Words to it.

In the Trial of my Lord *Preſton*, then the Labour was, that my Lord was not the Man that was concerned, as the Bearer of this Packet of Letters, or Writing, wherein the Treaſon is contained; but then it was Mr. *Aſhton*; the Packets were found about him: But now it is not Mr. *Aſhton*, but my Lord *Preſton*; and this is now the Queſtion before you, that he ſtands upon.

But, if ſo be, they were all concerned in the Carriage and Tranſporting of this Buſineſs, then they are all alike guilty of Treaſon, and therefore they cannot ſhuffle it from one to another.

Now

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Now there appears ſome Reaſon, why they would not all agree to be tried together; for now it is but turning it from my Lord *Preſton* upon *Aſhton*, and Mr. *Aſhton* upon my Lord *Preſton*, and *Elliot* upon either of them; and ſo, by this Means, all might eſcape, if this were ſufficient to ſerve their turn.

But the Queſtion before you, is, Whether all theſe Perſons are not all equally concerned? and it is the Evidence muſt be your Guide and ours: For it is not Mr. *Aſhton*'s Affirmation, that he had Buſineſs to go into *France*, and he happened unluckily to fall into theſe Men's Company, that will be a ſufficient Excuſe, unleſs he prove it.

It had been an eaſy Matter for him to have proved, if he had been going into *France* upon Buſineſs for Colonel *Worden*; but at length that is turned off, and then the Pretence for going, is, to recover ſome Money he had owing to him there, and that he had payed for another Perſon: Had he Papers of Inſtructions of this kind? Had he any one Witneſs of this Thing?

The Merchandize that he carried out with him, is of another Import: Where were the Notes or Bonds that he was to recover? Where is the Account that he had to make up with any body beyond Sea? There is no Manner of Evidence of any ſuch Thing.

Next, Gentlemen, do but conſider, if the Man were ſo innocent, as he would inſinuate, as if he had not gone with the reſt upon this Errand; How came the Man to have ſo heavy a Concern upon him? Why ſhould he go to take up theſe Papers if they were not his Brats? Why ſhould he clap them into his Boſom, if he knew nothing what was in them? Why was his Concern ſo great, to have them thrown overboard?

Gentlemen, if you expect the Hearts of Men ſhould be proved, otherwiſe than as Men gueſs one another's Meaning by their Actions, it is impoſſible to convict any Man of a Crime: For if his own Affirmation ſhall be a Defence, he will never want a Defence to keep himſelf from being convicted: But that is not what the Law gives Credit to; it muſt be Proof and Evidence that you are to judge upon. But of all he pretends to, he proves nothing.

How came he acquainted with my Lord *Preſton?* Sure he was a Man ſufficiently known in the World? Why ſhould he go with him and Mr. *Elliot?* Are they not all known? Are they not Perſons of the ſame Diſpoſition, and much in the ſame Imployment?

He had been taken a little before, he ſays himſelf, and was hindred from going; and he had ſtrange ill luck, if there was nothing elſe in the Buſineſs than what he pretends.

Gentlemen in ſhort, if you do find by the Evidence, that he was going upon a good and honeſt Deſign, and that he knew nothing of the Danger that was in theſe Papers; and that theſe Perſons were in, by Reaſon of theſe Papers, and yet would go about to have theſe Papers concealed, and endeavour to have them thrown away, without knowing what was in them: Theſe are Evidences that will be good for you to go by, if you have any ſuch; but to take his Affirmation, becauſe he ſays it, when he proves nothing, that is no Evidence to go by.

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I leave it to you, as my Lord has done. If you are ſatisfied upon the Evidence, that he is guilty; I doubt not, you know, and will do your Duty, and will find him ſo; and if you have no ſuch Evidence, then you ought to find him not guilty.

Mr. Aſhton. My Lord, I ſhall reckon it a particular Favour, if you will pardon me one Word, after your Lordſhip has given the Charge.

L. C. J. Holt. Well, what ſay you?

Mr. Aſhton. I think with Submiſſion, that there is no Proof I knew or was privy to, the Contents of any of theſe Papers.

L. C. J. Pollexfen. Pray, Mr. *Aſhton*, ſhew any Man any Reaſon, if you can, why did you go down and catch up theſe Papers, if you did not know what was in them? They might be for your Advantage to be ſhewn, for any thing you pretend to know.

Mr. Aſhton. I did it for my Lord *Preſton*'s Sake, whoſe Hand was proved, and he ſtands convicted as the Bearer of thoſe Papers.

Mr. J. Eyre. But you forget one Thing that was plainly proved, Mr. *Aſhton*; That when you importuned Captain *Billop* to throw away the Papers, you uſed this as an Argument, It would do him no Good to injure three honeſt Gentlemen.

Mr. Aſhton. I did not ſay ſo, my Lord, that I know of, though indeed he has ſworn it.

L. C. J. Holt. Look you, Mr. *Aſhton*, you have been heard as long as you did deſire to ſpeak, and were asked over and over again, Whether you had any more? You are not not now ſaying any new Matter; if you could urge any thing that had been omitted, which made for your Advantage, I believe the Court would indulge you, though it be againſt the Courſe.

Aſhton. My Lord, I ſay there is nothing under my Hand; there is no Privity proved: Does Suppoſition condemn a Man? And is there any thing but Suppoſition againſt me? There is not my Hand proved in any of the Papers: I beſeech your Lordſhip and the Jury to obſerve that.

L. C. J. Holt. Your being in the Company, and being ſo concerned, and importunately endeavouring to have them thrown over-board; the hiring the Veſſel to go with theſe Treaſonable Papers to an Enemy's Country, and the Papers found about you, is Fact proved, and is left to the Gentlemen of the Jury to conſider of.

The Jury being withdrawn, returned about half an Hour afterwards, and brought in Mr. *Aſhton* GUILTY. Aſhton *convicted.*

Then the Court adjourned for an Hour, and being ſet again, my Lord *Preſton* and Mr. *Aſhton* were called to Judgment; and it being demanded, What they could ſay, why Sentence ſhould not be pronounced on them? the Lord *Preſton* ſaid, He appealed to the Court, if the Treaſon had been ſufficiently proved; for in the Caſe of Colonel *Sidney*, it was held that Compariſon of Hands was no Evidence, and that there ought to be one or two Witneſſes

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neſſes to teſtify the Hand-writing; that having been diſordered by the Crowd, and the Length of his Trial, he had not urged this when he ought, and knew it was now too late; he had nothing more to ſay, but ſubmitted to the Judgment of the Law.

Lord Preſton *and* Aſhton *condemned.*

Mr. *Aſhton* objected, That the Word *Cymba* was written with an *S* in the Indictment, which was a falſe Spelling, and, he was informed, would vitiate the whole Indictment; but, upon Peruſal of it, this appeared to be a Miſtake; whereupon the uſual Sentence in High-Treaſon was pronounced on both of them; but my Lord *Preſton* was afterwards reprieved, and Mr. *Elliot* was never brought upon his Trial: Only Mr. *Aſhton* was executed, on the 28th Day of *January*, 1690-1.

Aſhton *only executed.*

Remarks on the Trials of Lord Preſton *and* Aſhton.

These are the firſt State Trials we meet with after the Revolution; the Government, was then but in its Infancy, ſcarce acknowledged by many; which made it ſeem neceſſary to the Adminiſtration to aſſert their Authority, and ſhew thoſe who were aiming at a Reſtoration, that it was no leſs penal to conſpire againſt the Crown in this Reign, than it had been in any other that preceded it.

The Lord *Preſton* objected, That he ought not to be tried in any inferior Court, becauſe King *James* had made him a Peer, before the Vote of Abdication, when all Writs and Proceſs run in that King's Name, and the Magiſtrates acted by Commiſſions from him; but it appeared, that the Houſe of Lords had, rejected his Patent, and taken his Lordſhip into Cuſtody for making the like Claim in that Houſe; and that my Lord *Preſton*, to obtain his Liberty, had himſelf diſclaimed his Right of Peerage: I preſume, therefore, that the Houſe of Lords looked upon King *James*'s Reign to be expired on his retiring to *France*, which was ſome Time before the Vote of Abdication.

The Priſoners in this Reign, as in the laſt, we find, moved for a Copy of the Indictment, a Copy of the Pannel, and for Counſel to plead for them; the denying of which were thought great Hardſhips in the late Reigns: But, yet we ſee ſome of the ſame Men, who pretended their Friends had hard Meaſure, that they were not indulged in theſe Particulars formerly, now maintaining that the Priſoners had no Right to ſuch Privileges.

We find alſo Similitude of Hands held to be an Evidence of High-Treaſon at this Trial, which had been ſo much clamoured againſt at *Sidney*'s Trial: And indeed thoſe that are under the Hatches never fail to exclaim at the Rigour of the Law, and the Hardſhips put upon them; while thoſe in Authority think it abſolutely neceſſary to inſiſt on the Legality of ſuch Proceedings, and of ſuch Evidence, for the Preſervation of the Government. I make no manner of doubt, from the Inſtructions and Memorandums found under the Lord *Preſton*'s Hand, that he was going over to give intelligence to the Enemy, of the State of the Nation, and of our Forces by Sea and Land, in order to bring about another Revolution; but whether *Aſhton* was equally guilty, is a Queſtion.

Every Caſe almoſt may be reduced to a very narrow Compaſs; and, notwithſtanding the extraordinary Length of theſe Trials, my Lord Chief Juſtice *Holt* obſerved rightly, that there was but one Point to be conſidered, namely, If the Priſoners were acquainted with the Contents of thoſe Papers, and were carrying them over with an Intent to promote a foreign Invaſion and Rebellion? And, as to my Lord *Preſton*, I believe every one who reads theſe Trials muſt be of Opinion, that he knew the Contents of the Papers, and was carrying them over with ſuch Views.

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But as to Mr. *Aſhton*, he ſeems to have inſiſted, with a great deal of Reaſon, that there was no Proof of his being acquainted with the Contents of theſe Papers: It is very poſſible my Lord *Preſton* might not have acquainted him with them; or if he did, ſince his Lordſhip was actually convicted of being the Bearer of them, and the Contriver of them, how could *Aſhton* be preſumed guilty of either? Let us put the Caſe, that three People hire a Boat to go to an Enemy's Country, on different Views; one of them to give an Account of our Strength, and to invite an Invaſion, and the other two only to get out of the Way, becauſe they found themſelves obnoxious to the Government; ſhall the two laſt be adjudged guilty, of High-Treaſon, becauſe they knew the Third was going upon a Treaſonable Deſign? This I very much queſtion: But admitting there was no poſitive Proof that they were privy to the Deſign, then ſurely no Man will affirm they were guilty of High-Treaſon, eſpecially when the Law requires two poſitive Witneſſes in theſe Caſes.

I cannot find there was any thing but preſumptive Evidence againſt *Aſhton*; and he rightly obſerves, that he was one of the firſt Men that ever was convicted of High-Treaſon upon Preſumptions: It was true he hired a Veſſel for the Uſe of all Three, and gave an extraordinary Price for it; this ſhews he wanted to get over to *France*, out of the Way of Proſecution; but this is ſurely very ſlender Proof of his being privy to the Contents of the Lord *Preſton*'s Papers, any more than the taking up the Packet his Lordſhip had dropped, and putting it into his Boſom: He might reaſonably preſume there were Letters in that Packet that were not fit for the Government to ſee, and yet he might not know there was High-Treaſon in them; or, if he did ſuſpect as much, he was not the Bearer of them, but the Lord *Preſton*; and if he was not the Bearer, the Chief Juſtice ſeems to admit, he could not be guilty, though he was of the Company: However, the Jury took upon them to *preſume* he was engaged in the ſame Deſign with the Lord *Preſton*, and upon that *Preſumption* to convict him.

As to *Elliot*, it was not thought fit to try him as the Bearer of theſe Papers, when two Perſons had been already convicted of being the Bearers, and my Lord *Preſton*, though moſt notoriouſly guilty, was pardoned, poſſibly on Account of the Diſcoveries he made: It was of more Importance to the Government, at that Juncture, to know who were their Friends, and who their Foes, than to take the Forfeiture of that Lord's Life: He ſeems to have capitulated not to be made an Evidence, and that may be the Reaſon we meet with no more Trials for this Conſpiracy.

The

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Harriſon's *Trial.*

The Trial of HENRY HARRISON, Gent. for *Murder*, at the *Old-Baily*, *London*, on the 6th of *April*, 1692. 4. *W.* & *M.*

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THE Caſe was this: *Harriſon*, and another Man, on the Fourth of *January* preceding, about Ten at Night, took a Hackney-Coach, and drove to Dr. *Clenche*'s Houſe, in *Brownlow-Street*; and pretending there was a ſick Perſon wanted the Doctor, he was perſuaded by them to come into the Coach, and they drove to *Leadenhall-Street*; where *Harriſon* ſent the Coachman of an Errand, and in the mean Time *Harriſon* and the other Man ran away, and when the Coachman returned, he found Dr. *Clench* ſtrangled in the Coach, with a Handkerchief, in which was a Coal that lay againſt his Windpipe.

Harriſon was induced to do this, as it is ſuppoſed, on the Account of one Mrs. *Vanwicke*, with whom he was very intimate, and who having borrowed Money of the Doctor, he had called it in; and, upon her not paying it, the Doctor had delivered Ejectments, in order to get Poſſeſſion of the Eſtate ſhe had mortgaged for it. *Harriſon* was convicted of the Murder, and afterwards executed; but this being no State Trial, I ſhall take no further Notice of it.

Cole *tried for the ſame Murder.*

John Cole was tried at the *Old-Baily*, for the ſame Murder, on the 2d of *September* following; but there being only hear-ſay Evidence produced againſt him, he was acquitted.

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Lord Mohun's *Trial.*

The Trial of CHARLES Lord *Mohun*, for *Murder*, before the whole Houſe of Lords, in *Weſtminſter-Hall*, on the 31ſt of *January*, 1692-3. 4 *W.* & *M.*

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THIS alſo is a Trial for Murder; but as it was before the Houſe of Lords, and ſo many Points of Law debated and reſolved, by moſt of the Judges of England, *on this Occaſion, it ſeems to require our Attention as much as a State Trial, and therefore I ſhall be more particular in this than in the former.*

The Indictment.

The Indictment was found by the Grand Jury of the County of *Middleſex*, and ſet forth; That *Richard Hill*, late of the Pariſh of *St. Clement Danes*, in the County of *Middleſex*, Gent. and *Charles* Lord *Mohun*, late of the Pariſh and County aforeſaid, did, feloniouſly, wilfully, and of their Malice aforethought, aſſault *William Mountford*, Gent. in the ſaid Pariſh and County; and that the ſaid *Richard Hill*, with a drawn Sword or Rapier, did ſtrike and thruſt the ſaid *William Mountford* near the Right Pap, giving him thereby one mortal Wound, of the Breadth of one Inch, and of the Depth of twenty Inches; of which the ſaid *William Mountford* languiſhed till the Tenth of the ſame Month, and then died; and that the ſaid *Charles* Lord *Mohun*, at the Time of the Murder aforeſaid, wilfully, and of his Malice afore-thought, was preſent, aiding, abetting, comforting, and aſſiſting the ſaid *Richard Hill*: And ſo the ſaid *Charles* Lord *Mohun*, and the ſaid *Richard Hill*, did feloniouſly, willfully, and of their Malice afore-thought, kill and murder the ſaid *William Mountford*, againſt the Peace of the King and Queen, &c.

Marquis of Carmarthen *Lord High-Steward.*

The Lords coming down from their Houſe, to the Court erected in *Weſtminſter-Hall*, on *Tueſday* the 31ſt of *January*, their Majeſties Commiſſion, conſtituting *Thomas* Marquis of *Carmarthen*, Preſident of the Council, Lord High Steward, was read; his Grace, and the reſt of the Peers, ſtanding up uncovered, while it was reading.

Then the Writ of *Certiorari*, directed to the Commiſſioners of *Oyer* and *Terminer* for the County of *Middleſex*, to remove the Indictment into the Houſe of Lords, with the Return and the Record of the Indictment, were read: After which his Grace removed from the Wool-pack to the Chair, which was placed upon an Aſcent before the uppermoſt Step of the Throne, and ſeated himſelf in the Chair; and Proclamation was made for the Governor of the *Tower* to return his Precept, and bring the Lord *Mohun*, his Priſoner, to the Bar. Whereupon the Deputy-Governor brought Lord *Mohun* to the Bar, the Gentleman-Jaylor carrying the Axe before him, and ſtanding with it afterwards at the Right Hand of the Priſoner, with the Edge from the Priſoner.

The Priſoner, on approaching the Bar, made three low Bows; one to his Grace the Lord High Steward, a ſecond to the Peers on the Right Hand, and a third to the Peers on the Left; which his Grace and all the Peers returned.

Then his Grace, obſerving that his Voice would not be heard at ſuch a Diſtance from the Bar, (by the Conſent of the Lords) went down to the Wool-pack again, and made the following Speech.

Lord Steward's Speech.

Lord High Steward. My Lord *Mohun*, I am to let your Lordſhip know, you are not to hold up your Hand upon your Arraignment; and I am to let you that are Counſel at the Bar likewiſe know, that both you and the Witneſſes are to direct yourſelves to the Court in the Stile of *my Lords*, ſpeaking to the Court.

Then there was a little Pauſe; after which his Grace addreſſed himſelf to the Priſoner thus:

Lord High Steward. My Lord, you are brought here before this Supreme Court in order to your Trial.

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The Charge againſt you is, for the Murder of one of the King's Subjects, which is a Crime the King will at no Time paſs over, in the meaneſt Man's Caſe, without making a ſtrict Enquiry into the Offence, and cauſing due Puniſhment to be inflicted on the Offender.

This, my Lord, is charged upon you; not by any ſlight Information, but by the Grand Inqueſt of this County, made up of Gentlemen of good Worth and Conſideration. It is true, that this Inqueſt does not amount to much more than a bare Accuſation; and therefore it ought not to be made any uſe of, ſo as to prejudice your Lordſhip's Trial: But it is that which is the Ground of preſenting this Black Crime before my Lords your Peers, who cannot receive it without ſome Trouble, to find any one of their Body ſuſpected to be guilty of an Action ſo diſhonourable as this is repreſented to their Lordſhips.

My Lord, you are but a very young Man, and therefore it is to be hoped you cannot ſo early have had your Hands in Blood: And the ſame Reaſon, becauſe you are ſo young, may, perhaps, make you conceive that you are under ſome greater Diſadvantage in making your Defence, than you would be if your Experience had been longer.

But, to remove any Miſapprehenſion you can have of that kind, it is very proper to put your Lordſhip in mind that you have the good Fortune now to be tried for this Fact in full Parliament, where no Evidence will be received but ſuch as muſt be manifeſt and plain, beyond all Contradiction; ſo that you have nothing to fear here, but your own Guilt.

In the next place, my Lord, you need not be diſcouraged for the Want of Counſel; for the Honour of this Court is ſuch, as will take Care to inform you of any Advantage that the Law can give you. And you may be farther aſſured, that no Art or Skill in arguing can take any place here, either againſt your Innocency, or to divert my Lords from doing you exact Juſtice. Nay, I dare preſume to ſay, on the part of my Lords, that if there be Room for any Abatement of Severity, you may reaſonably expect to find it from their Lordſhips.

Theſe Conſiderations, my Lord, cannot but give you great Conſolation under your unhappy Circumſtances, it being moſt certain that nothing but your own Crimes can hurt you.

But at the ſame Time I muſt tell you, that your Lordſhip is not to flatter yourſelf with an Expectation or Hope that any Favour will be ſhewed you beyond what Honour and Juſtice can allow: And I hope you have well conſidered, that it is no leſs than your Life, your Honour, and your Eſtate, that you are now to defend; inſomuch that I cannot doubt but your Lordſhip has recollected and prepared yourſelf for the Defence of what ſo very much concerns you. I will not therefore detain you any longer than to give you ſome Directions in the Order and Method of your Trial; and thoſe are, That your Lordſhip do give Attention carefully to the reading of your Indictment: That you give no Interruption to the Counſel or Witneſſes, when they ſpeak againſt you; and when the proper Time ſhall come for your Witneſſes to be examined, and that you are to be heard in your own Defence, I will give you due Notice of it.

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Your Lordſhip may alſo be certain, that when it ſhall come to your Turn to ſpeak, you ſhall be heard with all the Patience and Favour that the Matter will bear; and at laſt, when all hath been heard that can be ſaid on both Sides, your Lordſhip need not doubt but that my Lords will give ſuch a Judgment as will be ſuitable to the Honour, Juſtice, and Equity of this great Court.

Clerk, read the Indictment to my Lord.

Then the Indictment was read in *Engliſh*; to which his Lordſhip pleaded, Not Guilty; and the Judges were permitted to be covered. After which Proclamation being made for the King's Witneſſes to appear, Mr. Serjeant *Thompſon* opened the Indictment, and Mr. Attorney General opened the Evidence.

Mr. Attorney Gen. (Sir John Somers.)

Mr. *Attorney General.* My Lords, the Indictment has been opened, and by that your Lordſhips ſee, the Noble Lord at the Bar ſtands charged with the High Crime of Murder.

My Lords, his Peerage gives him a Right to be tried in this Great and Noble Court; and as my Lord has juſt Reaſon to put a high Value upon this Privilege, ſo on the other hand, their Majeſties, who are making Inquiſition for the Blood of one of their Subjects, have a full Aſſurance that no Compaſſion for my Lord's Youth, no Conſideration of his Quality, or Regard for one of your own Order, will make your Lordſhips unmindful of the heinous Nature of the Crime, or cauſe any Variation in the Steadineſs of your Juſtice.

It is true, my Lords, the Difference between the Trial of a Peer, and a Commoner, is very great; but there is no Difference in the Crime, whether committed by one or the other: It is the ſame Law by which they muſt be tried and judged; and that Fact which would be Murder in the meaneſt Subject, is no leſs than Murder if committed by the greateſt Peer.

My Lords, it is not inſiſted upon, that the Noble Lord at the Bar gave the Mortal Stroke with his own Hand; nor is it ſo alledged in the Indictment: The Indictment findeth the Wound to have been given by the Hand of *Richard Hill:* But if my Lord the Priſoner was of his Party, if he concurred with him in the Thing, if he was preſent and abetting to the Fact, though he did not ſtrike a Stroke, though he was no more than a Looker-on when the Thing was done, the Law ſaith, He is a Principal in the Murder.

Whether my Lord's Caſe will fall within this Rule, is the Point for your Lordſhips to determine, when the Witneſſes are heard.

My Lords, it is my Part to give an Account of the Nature of the Evidence, to the End that your Lordſhips may more eaſily go along with the Witneſſes as they are examined,

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ed, and more readily make your Obſervations upon what they ſay.

This I ſhall do as ſhortly and as exactly as I can, without pretending to aggravate any Thing, which I could never think did become any one in my Station; and I am ſure would be to very little Purpoſe before ſuch a Judicature as this: For, after all, your Lordſhips will found your Judgments upon the Fact; not as it is repreſented by us, but as it appears upon the Oaths of the Witneſſes.

The Time when the Fact for which my Lord is to be tried was committed, was the 9th Day of *December* laſt.

The Occaſion of it was thus:

Captain *Hill*, the Perſon mentioned in the Indictment, had for ſome Time before made Addreſſes of Courtſhip, in the Way of Marriage, to one Mrs. *Bracegirdle*, an Actreſs in the Play-houſe; but theſe Propoſals were totally rejected. This put Mr. *Hill* in a very great Rage, and he declared, that Mr. *Mountford* (the Perſon ſlain) was the only Man that ſtood in his Way, and with many Execrations expreſſed his Reſolution to be revenged upon him: This he did at ſeveral Times, and before ſeveral Perſons.

The ſame Day the Fact was committed, in the Morning, my Lord, who is now at the Bar, and Captain *Hill*, went together to hire a Coach to go to *Totteridge*, and directed the Coachman to have ſix Horſes ready; but to be waiting for them in *Drury-lane*, near the Play-houſe, with only two Horſes in his Coach, about Nine o' Clock the ſame Night. My Lord and Capt. *Hill* dined together that Day at a Tavern in *Covent-Garden*; and there much of their Diſcourſe was about Mrs. *Bracegirdle*; and both of them did freely declare their Opinion, that Mr. *Mountford* lay with her. But the principal of their Diſcourſe was in Relation to a Deſign which they had formed for the ſeizing upon Mrs. *Bracegirdle*, and forcing her into a Coach, and carrying her away into the Country.

This was to be executed that Night; and accordingly they were then providing Arms for that Purpoſe. Mr. *Hill* did acquaint my Lord, that the Soldiers would be ready by the Time; and my Lord took Notice that the carrying her off would ſtand Mr. *Hill* in 50 *l.* at leaſt. Thereupon (as your Lordſhips will hear from the Evidence) Mr. *Hill* uſed this Expreſſion, If the Villain reſiſt, I will ſtab him; and then my Lord was pleaſed to ſay, *That he would ſtand by his Friend.*

After they had continued there ſome Time, being about to part, Mr. *Hill* told my Lord, that unleſs he was at the Play-houſe by Six o' Clock, the Thing could not be effected, and he ſhould be undone: But my Lord promiſed to be there at the Time.

Accordingly, they both met at the Play-houſe, and after they had been behind the Scenes, and informed themſelves that Mrs. *Bracegirdle* would not be there that Night, they left the Play-houſe. But it ſeems they had got Intelligence that ſhe was to ſup that Night at one Mr. *Page*'s Houſe in *Drury-Lane*, and therefore they planted themſelves with their Soldiers near that Place, over-againſt my Lord *Craven*'s Houſe.

Lord High Steward. They; who do you mean?

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Mr. *Attorney General.* My Lord, the Priſoner at the Bar and Mr. *Hill*. After they had continued there for a conſiderable Time, (I think till towards Nine o' Clock) they began to have a Jealouſy that they might be under ſome Miſinformation; and therefore ordered the Coachman to drive them into *Howard-Street*, the Place where Mrs. *Bracegirdle* lodged; and obſerving ſome People walking near the Lodging, they ſaid they doubted they were diſcovered, and had been betrayed.

But they ſoon came back again to *Drury-Lane*, and fixed themſelves in their former Station. About ten o' Clock Mrs. *Bracegirdle*, accompanied with Mr. *Page*, (at whoſe Houſe ſhe had been) and with her Mother, and (I think) her Brother, going home; when they came to the Place where the Coach ſtood, with the Door open, and my Lord at the Bar placed in the Coach, and ſeveral Caſes of Piſtols by him, the Soldiers, together with Capt. *Hill*, came up to Mrs. *Bracegirdle*, ſeized upon her, and would have forced her into the Coach: Mr. *Hill* endeavoured with Violence to force away Mr. *Page*, who was then leading her, and ſtruck him; but Mrs. *Bracegirdle*'s Mother holding her about the Middle, they could not readily get her into the Coach; and during this Struggle, there was an Opportunity given to Mr. *Page* to call for Help; and ſeveral Perſons coming preſently from the Houſes near, and the People in the Street beginning to riſe upon them, they found it impracticable to effect their Deſign at that Time.

Thereupon the Soldiers were diſmiſſed; but my Lord and Mr. *Hill* would not be denied the Liberty to wait upon Mrs. *Bracegirdle* to her Lodging; and accordingly, together with Mr. *Page* and her Mother, and other Perſons, they went together to Mrs. *Bracegirdle*'s Lodging, at one Mrs. *Browne*'s Houſe in *Howard-ſtreet*. Mr. *Mountford*'s Houſe was in *Norfolk-ſtreet*, below *Howard-ſtreet*. *Howard-ſtreet* is a Croſs Street which leads from *Arundel-ſtreet*, and through *Norfolk-ſtreet* to *Surry-ſtreet*; and ſo it was not poſſible for *Mountford* to come to his own Houſe, but whoever ſhould fix themſelves in *Howard-ſtreet* muſt have the Opportunity of ſeeing him.

As they were going along, *Hill* ſwore he would be revenged; but named nobody.

After that Mrs. *Bracegirdle* and the Company were come to her Lodging, ſhe and her Mother, and *Page*, went into the Houſe: My Lord *Mohun* and Mr. *Hill* ſtaid in *Howard-ſtreet*, and there continued for near two Hours together, and for the moſt Part of that Time with their Swords drawn.

Mr. *Mountford*, as it happened, did not come Home till late that Night; ſo that their Stay being long, my Lord and Mr. *Hill* thought fit to ſend for Wine, and had one or two Bottles, which they drank in the Street, near Mrs. *Bracegirdle*'s Lodgings.

During this Time, they were heard to ſay (that is, one of them was; but which of them, by reaſon of the Darkneſs, we cannot tell) that if he could not be revenged that Night, he would the next Morning; upon which a Boy,

who

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who was there with them (but who the Boy was we cannot diſcover) ſaid, Good my Lord, do not do it; alter your Reſolution. I did obſerve before, that Mrs. *Bracegirdle* ſupped that Night at Mr. *Page*'s Houſe, and Mrs. *Page* having heard of the great Outrage and Tumult in the Street, and that her Husband was gone Home with Mrs. *Bracegirdle*, and being under a great Concern for his Safety, thought fit to follow him thither. As ſhe entered into the Houſe, ſhe ſaw my Lord *Mohun* and Capt. *Hill* near the Door; and preſently after, before ſhe could have a full Relation of what had happened in *Drury-Lane*, Mrs. *Browne*, the Owner of the Houſe where Mrs. *Bracegirdle* lodged, came into the Room, and told them that my Lord *Mohun* and *Hill* where waiting for Mr. *Mountford*, and that ſhe was apprehenſive it was with no good Intention. Thereupon Mrs. *Page* thought it requiſite to go to Mrs. *Mountford*'s Houſe, to give her Notice of it, and to deſire her to find out where her Husband was, and to caution him not to come home unleſs he brought a good Guard with him.

As ſhe went out, ſhe ſaw them both with their Swords drawn, and ſhe acquainted Mrs. *Mountford* with it, who ſent to ſeveral Places in Search of her Husband; but ſhe was ſo unfortunate that the Meſſengers could not find him.

Whilſt this was doing, the Watch came into *Howard-ſtreet*, being alarmed at the Report that two Gentlemen were drinking in the Street, and walking there with their naked Swords. The Watch demanded of my Lord *Mohun*, Why he had his Sword drawn? My Lord was pleaſed to return them this Anſwer, That he was a Peer of the Realm, and bid them touch him if they durſt. They then asked *Hill*, Why his Sword was out? and my Lord made the Excuſe for him, That *Hill* had loſt his Scabbard.

The Watch obſerving the Drawer who attended upon them, and knowing that he lived at a Tavern in *Surry-ſtreet*, went to inform themſelves who theſe Perſons ſhould be, that were walking in ſuch a Manner at that Time of Night: But they were hardly got into the Houſe before they heard the Cry of Murder.

The Witneſſes will inform your Lordſhips, that as Mr. *Mountford*, about twelve o'Clock, was coming home, my Lord *Mohun* met him, and ſaluted him. Mr. *Mountford* ſaid, My Lord *Mohun*, What does your Lordſhip do here at this Time of Night? and my Lord made Anſwer, He ſuppoſed Mr. *Mountford* had been ſent for. No, no, ſays *Mountford*, I came by Chance. My Lord ſaid to him again, I ſuppoſe you have heard about the Lady. Mr. *Mountford* anſwered, I hope my Wife hath given your Lordſhip no Offence. No, ſays my Lord *Mohun*, it is Mrs. *Bracegirdle* I mean. To this, the Reply of Mr. *Mountford*'s was, Mrs. *Bracegirdle* is no Concern of mine; but I hope your Lordſhip does not countenance any ill Action of Mr. *Hill*'s.

Upon this, *Hill* came up to them, and ſaid to my Lord, it was not a Time to diſcourſe of theſe Matters; and as my Lord continued to talk with *Mountford*, *Hill* ſtruck *Mountford* firſt, and in a manner at the ſame Inſtant, made a Paſs at him, and run him clean thro' the Body; and this before Mr. *Mountford*'s Sword was drawn. Immediately upon this, there was a Cry of Murder, and the Watch came with what Haſte they could and took my Lord *Mohun*; but *Hill* was fled: When my Lord was taken, his Sword was not drawn.

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As ſoon as my Lord *Mohun* was taken, the firſt Queſtion he asked was, If *Hill* was apprehended? and when he was told he was not, he ſaid he was glad of it, and he did not care if he were hanged for him: Adding at the ſame Time, That he was ſorry that Mr. *Hill* had ſo little Money about him, and wiſhed him all that he had in his own Pocket: And he did then alſo own to the Watch, that he had changed Coats with Mr. *Hill*, and had *Hill*'s Coat on him at that Time.

My Lords, this is the Subſtance of the Evidence, and in this Order, with your Lordſhips Leave, we ſhall offer the Proofs to your Lordſhips. I do not doubt, but your Lordſhips will attend to the Evidence with all Care, and will determine upon it according to Juſtice and Honour. I will detain your Lordſhips no longer; but proceed to call the Witneſſes to prove what I have opened.

Then the King's Witneſſes were ſworn, and firſt Mr. *George Powel*, who teſtified that about five or ſix Days before Mr. *Mountford*'s Death, he was drinking with *Hill*, who began Mrs. *Bracegirdle*'s Health, and ſaid there was no Bar between him and her, but *Mountford*, and he was reſolved to be revenged on him, one Way or other. That three Nights afterwards, he was at Supper with Lord *Mohun* and Captain *Hill*, and the ſame Diſcourſe ariſing, *Hill* whiſpered the Witneſs, and ſaid he was reſolved to have the Blood of *Mountford*; and the ſame Night Mr. *Mountford* was wounded, he (the Witneſs) ſat up with him, and asking him how the Matter happened, he anſwered Captain *Hill* killed him baſely, for whilſt Lord *Mohun* talked with him, *Hill* run him through, and that his Sword was not drawn till after he received the Wound.

Mrs. *Knight* teſtified, that *Hill* ſaid Mrs. *Bracegirdle* hated him, but loved ſomebody elſe; and ſhe demanding if he meant *Mountford*, *Hill* ſwore he ſhould find a Way to be even with him ſpeedily.

Mrs. *Sandys* teſtified, that ſhe dined with Lord *Mohun* and *Hill* that Day Mr. *Mountford* was killed, at the *Three-Tun*-Tavern, in *Chandos-ſtreet*, and Lord *Mohun* asked her (the Witneſs) if ſhe thought *Mountford* had lain with Mrs *Bracegirdle?* and ſaid preſently after, This Deſign would coſt *Hill* fifty Guineas; and *Hill* replied, If the Villain offered to reſiſt, he would ſtab him, and my Lord *Mohun* thereupon ſaid, He would ſtand by his Friend. That *Hill* afterwards deſired Mr. *Brough* to borrow a Caſe of Piſtols for him, and ſaid he had a Coach and Six in *Wyche-ſtreet*, to ſeize Mrs. *Bracegirdle*, and carry her into the Country, deſiring my Lord *Mohun* to meet him at Six at the Play-houſe, or he ſhould be ruined; and my Lord gave him his Honour to meet him, and ſaid, *He would ſtand by his Friend.*

Mrs. *Rogers* teſtified, ſhe ſaw Lord *Mohun* and *Hill* at the Play-houſe that Night *Mountford* was killed, and they had changed Coats.

Dixon

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Dixon the Coachman teſtified, that Lord *Mohun* and Capt. *Hill* bargained with him for a Coach and Six, to carry them to *Totteridge*, bid him come to the Play-houſe with a Pair only, and let the other four Horſes ſtand at St. *Giles's-Pound:* That he came to *Drury-Lane* as he was ordered, and drove his Lordſhip and Mr. *Hill* from thence to *Norfolk-ſtreet*, where he ſet them down and waited for them. When they returned, he drove them to *Craven-houſe* in *Drury-Lane*, and it being then about Ten he went Home, and left his Poſtilion to take care of the Coach: That while he was in *Norfolk-ſtreet*, he heard *Hill* ſay, They were betrayed, adding, *Damn me, my Lord, let us go and thraſh him.*

Mrs. Anne Bracegirdle *being ſworn, gave the following Evidence:* Having ſupped at Mr. *Page*'s in *Prince's-ſtreet*; about ten Mr. *Page* went Home with me, and my Mother, and my Brother, and coming down *Drury-Lane*, there ſtood a Coach by my Lord *Craven*'s; the Boot of the Coach was down, and my Lord *Mohun* was in it; and two Soldiers came and pulled me from Mr. *Page*, and four or five more came up, and they almoſt knocked down my Mother; but ſhe recovered herſelf and hung about my Neck, ſo that they could not get me into the Coach; and Mr. *Page* went to call Company to reſcue me. Then *Hill* came with his naked Sword and ſtruck at Mr. *Page* and my Mother; but Company coming in prevented the Deſign. Then *Hill* ſaid, he would ſee me home, and led me by one Hand (his Sword being drawn) and my Mother by the other; and my Lord *Mohun* came out of the Coach and followed us, as did all the Soldiers; but they were diſmiſſed. And as we went along Mr. *Hill* ſaid, he would be revenged: And when we came home, Mr. *Hill* pulled Mr. *Page* by the Sleeve, and ſaid he would ſpeak with him: But Mr. *Page* was pulled into the Houſe, and Mr. *Hill* walked up and down the Street with his Sword drawn. -------My Lord *Mohun* and Mr. *Hill* were together, and when Mrs. *Brown* asked them, what they ſtayed there for; *Hill* anſwered to be revenged of Mr. *Mountford*. Whereupon we ſent to Mrs. *Mountford* to prevent Danger. And as I was liſtening at the Door, the Watch came by, and ſaid to my Lord *Mohun* and Mr. *Hill*, Gentlemen why do you walk with your Swords drawn? Says my Lord *Mohun*, I am a Peer of *England*, touch me if you dare. Then the Watch went away, and about a Quarter of an Hour after, there was a Cry of Murder.

Mr. *Gawen Page* was ſworn.

He depoſed, That on *Friday* the 9th of *December*, about Ten at Night, as he was leading Mrs. *Bracegirdle* home, there ſtood a Coach againſt my Lord *Craven*'s Door in *Drury-Lane*; and two Soldiers forced Mrs. *Bracegirdle* from him, and would have put her into the Coach: And that Capt. *Hill* was there with his Sword drawn, and gave the Deponent ſeveral Blows, and cryed, you Villain, ſtand! and my Lord *Mohun* was in the Coach; but Help coming in, they were prevented carrying off Mrs. *Bracegirdle*. Then the Deponent conveyed Mrs. *Bracegirdle* home, and Mr. *Hill* went with them (but bid the Soldiers be gone) and my Lord *Mohun* followed at a Diſtance. That when they came to Mrs. *Bracegirdle*'s Lodgings, *Hill* pulled the Deponent by the Sleeve, and ſaid he would ſpeak with him: And the Deponent anſwering, That Tomorrow would be better, *Hill* replied, Tomorrow then; but, God damn me, you will not go home to Night. Then the Deponent went into the Houſe, and about an Hour and a half after he heard an Out-cry of Murder; and going into the Street, he ſaw my Lord *Mohun* ſurrendering himſelf to the Conſtable; and my Lord's Sword was then in the Scabbard. That the Deponent then went to Mr. *Mountford*'s Houſe, and found him lying in his Blood upon the Floor: And *Mountford* told the Deponent, That he was barbarouſly run through, before he could draw his Sword.

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Mrs *Mary Page* being ſworn gave the following Evidence. My Lord, my Husband went home with Mrs. *Bracegirdle*, and hearing he had like to have been murdered, I went down towards Mrs. *Bracegirdle*'s Lodgings, and found my Lord *Mohun* and Mr. *Hill* walking about the Street, (Mr. *Hill*'s Sword only was drawn then); ſo I came into the Houſe, and Mrs. *Browne* went out to them, and asked, why they ſtaid there? They anſwered, they ſtaid for *Mountford:* Whereupon Mrs. *Bracegirdle* deſired me to go over to Mrs. *Mountford*'s Houſe, and ſpeak to her to ſend her Husband Word, that he ſhould keep where he was, or come Home with a good Guard: And as I was going over, I ſaw that my Lord *Mohun* had his Sword drawn, (they were then walking before Mrs. *Bracegirdle*'s Lodgings in *Howard-ſtreet*, and might ſee any one that went to Mr. *Mountford*'s Houſe, and up *Surry-ſtreet)*; and whilſt I was deſiring Mrs. *Mountford* to ſend away to her Husband, I heard Murder cried; and opening Mr. *Mountford*'s Door he came in, and threw his Arms about my Neck to ſupport himſelf; and he ſaid, *Hill* had murdered him. I helped him as far as the Parlour-Door, and there down he fell. Then I went up the Street and called out Murder; and my Lord *Mohun* came to me, and bid me take Notice, he had no Hand in it; for, he ſaid his Sword was not drawn: I replied, he was with *Hill*, with his naked Sword, juſt before.

Mrs. *Browne* was ſworn, (at whoſe Houſe Mrs. *Bracegirdle* lodged.)

She depoſed, That when Mrs. *Bracegirdle* came Home, ſhe cry'd, and related how my Lord *Mohun* and Mr. *Hill*, with ſome ſoldiers would have forced her into a Coach; and added, that my Lord *Mohun* and *Hill* were then at the Door: That thereupon the Deponent went out to them, and asked why they uſed Mrs. *Bracegirdle* in that manner? And my Lord *Mohun* anſwered, he protected her; and if it had not been for him, the Rabble would have torn her in Pieces: That he had no Deſign upon her, for his Part, but only to ſerve his Friend; and that Mr. *Hill*'s Deſign was to take her out of Town, and keep her a Week, and ſee if he could perſwade her to marry him: That *Hill* ſaid, he ſhould light of this *Mountford*; and the Deponent demanding What hurt *Mountford* had done him? *Hill* replied,

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plied, I have been abuſed, and will be revenged; and the Deponent went, and told Mrs. *Mountford* of it. That half an Hour after, or more, the Deponent ſaw Mr. *Mountford* coming down the Street; and ſhe went to him, but he would not ſtay to let her ſpeak to him: And preſently after *Mountford* met my Lord *Mohun*, and there paſſed ſeveral Compliments between them; and my Lord told Mr. *Mountford* he had a great Reſpect for him, and deſired they might have no Difference; but added, Here is a Thing fallen out between Mrs. *Bracegirdle* and Mr. *Hill*. *Mountford* replied, has my Wife diſobliged your Lordſhip? If ſhe has, ſhe ſhall ask your Pardon; but Mrs. *Bracegirdle* is no Concern of mine; I know nothing of this Matter; I come here by Accident, but I hope your Lordſhip will not vindicate Mr. *Hill* in ſuch Actions as theſe are. Upon this, ſhe heard Mr. *Hill* bid Mr. *Mountford* draw, and Mr. *Mountford* ſaid he would, and drew his Sword: But whether Mr. *Mountford* received his Wound before, or after he drew his Sword, ſhe could not tell.

Richard Row was ſworn.

He depoſed, That being in his Houſe in *Surry-ſtreet*, about a Quarter after Ten at Night he heard a Noiſe, and went out, and ſaw two Gentlemen and two Lads; and one of the Lads had one of the Gentlemen by the Arm, and ſaid, *Pray, my Lord, good my Lord, don't do it; --- alter your Reſolution*; and there was Anſwer made, that they would be revenged. That then the Deponent knew none of them; but that they went to the upper End of the Street, and returned again, and he ſaw Capt. *Hill*'s Boy following him: But that Capt. *Hill* was not in the ſame Cloaths he uſed to come to the Deponent's Houſe in. That he could not ſwear that my Lord *Mohun* was one of the Gentlemen, for the Deponent had never ſeen my Lord *Mohun*.

William Merry, a Watchman, teſtified, That as he was going his Rounds between Eleven and Twelve, he ſaw my Lord *Mohun* and Mr. *Hill* in *Surry-ſtreet*, walking on the paved Stones with their Swords drawn, and he (the Witneſs) bidding them put up their Swords, the Lord *Mohun* put up his, and offered it to him, but Mr. *Hill*'s remained drawn, having loſt his Scabbard, as they ſaid: That ſeeing ſome Women at a Door with Candles, and a Neighbour's Man with a Bottle and Glaſs, attending two Gentlemen, he asked what the Meaning of it was, and was anſwered, one of the Gentlemen had a Sweetheart there, and my Lord ſaid he was drinking a Lady's Health, and as ſoon as his Bottle was out, he would be gone. And that the Witneſs and the Conſtable going into a Houſe to enquire further about the Buſineſs, they heard Murder cried; whereupon they ran back again, and the Conſtable ſeized his Lordſhip.

Two other Watchmen confirmed the Teſtimony of *Merry*, and one of them added, That when they ſeized his Lordſhip, his Sword was in his Scabbard, and he trembled extreamly.

Mrs. *Brewer* depoſed, That ſhe liv'd next Door to Mrs. *Bracegirdle*, and ſaw Mr. *Mountford* come down the Street, and that my Lord *Mohun* went to him, and embraced him; and after mutual Salutations, Mr. *Mountford* asked, What made his Lordſhip there at that Time of Night? And my Lord ſaid, I ſuppoſe Mr. *Mountford* you are ſent for: You have heard of the Buſineſs of Mrs. *Bracegirdle*, and *Mountford* replied, No, he came by Chance: Then *Hill* came up and ſaid, Pray, my Lord, hold your Tongue; this is not a convenient Time to talk of that Buſineſs; and would have drawn his Lordſhip away. Mr. *Mountford* ſaid, He was ſorry to ſee my Lord aſſiſt Captain *Hill* in ſo ill an Action, and deſired his Lordſhip to forbear: Whereupon *Hill* ſtruck *Mountford* a Box of the Ear; and *Mountford* ſaid, Damn me, What's that for? And immediately *Hill* made a Paſs at him with his Sword, before *Mountford*'s Sword was drawn; and my Lord and they were all together at that Time, as near as ſhe could diſcern.

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Davenport the Conſtable confirmed the Teſtimony of his three Watchmen, and added, that when he had carried his Lordſhip to the Round-houſe, he ſaid, *God damn me, I am glad* Hill *is not taken; but I am ſorry he has no more Money about him: I wiſh he had ſome of mine, and I do not care a Farthing if I am hanged for him.* That his Lordſhip ſaid, he had changed Coats with *Hill* four or five times that Day, and that he had *Hill*'s Coat upon his Back then: That his Lordſhip ſurrendered very civilly, and told this Witneſs where Mr. *Hill* lodged; and he and his Watchmen going to the Lodgings to ſearch for him, *Hill*'s Boy came in, and they found Powder and Ball about him; and the Conſtable produced Mr. *Mountford*'s Sword in Court, which he ſaid he found broken in Pieces. He alſo brought with him the Lord *Mohun*'s and *Hill*'s Swords (*for* Hill *it ſeems had left his Sword in the Street.*)

Mr. *Bancroft* the Surgeon, who dreſſed Mr. *Mountford*'s Wound, teſtified, That when he told Mr. *Mountford* the Wound was mortal, he anſwered, *my Lord* Mohun *offered me no Violence; but while I was talking with him,* Hill *ſtruck me with his Left Hand, and with his Right Hand run me through, before I could put my Hand to my Sword*; and that *Mountford* died of the Wound about One the next Day.

Mr. *Hunt*, another Surgeon that attended Mr. *Mountford*, teſtified, That he declared *Mr.* Hill *was in him, and through him, before his Sword was drawn.*

Lord Mohun's *Witneſſes.*

Then my Lord *Mohun* called his Witneſſes, and firſt Mr. *Brereton*, to ſhew he had no Malice againſt *Mountford:* And Mr. *Brereton* depoſed, That a few Days before *Mountford*'s Death, he heard Lord *Mohun* ſay Abundance of kind Things of him.

Hill's Boy depoſed, That his Maſter and Lord *Mohun* had a Deſign to ſeize Mrs. *Bracegirdle*, and carry her to *Totteridge*; and that as ſhe came down *Drury-Lane*, they endeavoured to force her into a Coach, but were prevented; as the Kings Witneſſes had depoſed: That he was with his Maſter and Lord *Mohun* when Mr. *Mountford* came down *Norfolk-*

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Norfolk-Street and turned into *Howard-ſtreet*, and that there paſſed ſome Compliments between Lord *Mohun* and Mr. *Mountford*; after which Mr. *Mountford* ſaid, he was ſorry his Lordſhip ſhould vindicate Captain *Hill* in ſuch Rudeneſs: Whereupon the Captain came up, and ſaid, he would vindicate himſelf, and bid *Mountford* draw: Then his Maſter went into the middle of the Street, and *Mountford* drew and met him, and made three or four Paſſes, in which his Sword broke: That my Lord *Mohun* ſtood all the while on the flat Stones and did not meddle, only ſaid, *he would ſtay by his Friend, and Mr.* Hill *was his Friend:* That his Maſter Mr. *Hill* ran away, after Mr. *Mountford* was wounded; but Lord *Mohun* ſtood ſtill, and ſurrendered himſelf to the Watch.

Mrs. *Bracegirdle*'s Maid depoſed, That ſhe ſaw Mr. *Hill* and Mr. *Mountford* fight in the middle of the Street, and make two or three Paſſes at one another; after which *Mountford* ſaid he was killed, and threw down his Sword, and ſhe took it up, and there was a good Piece broken off. That *Hill* ran away, and *Mountford* went to his own Houſe; but Lord *Mohun* ſtaid on the flat Stones where he firſt met *Mountford* and embraced him, and when the Watch came his Lordſhip ſurrendered himſelf to them.

Mrs. *Ann Jones* depoſed, That Lord *Mohun* met *Mountford* and embraced him, and ſeveral Expreſſions of Kindneſs paſſed between them; but *Mountford* ſaying he hoped his Lordſhip would not vindicate Captain *Hill*. The Captain hit *Mountford* a Box of the Ear and bid him draw; and thereupon *Mountford* ſaid, Damme, What's that for? and they both went off the pav'd Stones into the middle of the Street; and at the ſecond Paſs Mr. *Mountford*'s Sword was broke, and he flung it down and ran away ſaying, I am a dead Man. *Hill* ran off another Way; but my Lord ſtood ſtill upon the pav'd Stones: He did not meddle, as ſhe ſaw, while the others were fighting; and afterwards his Lordſhip ſurrendered himſelf to the Watch. Mr. Attorney demanding, If the Scuffle did not begin upon the Pavement, ſhe ſaid, it began there.

Warrington depoſed, That he ſaw *Hill* and *Mountford*, with their Swords, drawn upon the paved Stones, and that they went off the paved Stones not a Swords Length aſunder, and paſſed at each other; but running for a Paring-ſhovel to part them, he ſaw no more of the Encounter: And it being demanded if he ſaw *Mountford*'s Sword drawn, before he was wounded, he anſwered, He could not be poſitive whether it was or no, ſome Women ſtanding between him and them.

Then the Examination of *Hill*'s Boy before the Coroner was read, which differed but little from his Evidence in Court; for he teſtified before the Coroner, That when his Maſter and *Mountford* were paſſing, my Lord *Mohun* ſaid, *He would ſtand by his Friend, and that* Hill *was his Friend.*

Seven Points decided by the Judges.

Upon this Evidence the Lords propoſed ſeven Queſtions to the Judges, which were anſwered by them.

1ſt Queſtion.

I. In caſe a Man ſhall murder another, Whether all thoſe in his Company, at the Time of the Murder, are ſo neceſſarily involved in the ſame Crime, that they may not be ſeparated from the Crime of the ſaid Perſon, ſo as in ſome Caſes to be found guilty only of Man-ſlaughter?

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Anſwer. The Crime of thoſe who are in the Company at the Time of the Murder committed, may be ſo ſeparated from the Crime of the Perſon that committeth the Murder as in ſome Caſes, they are only to be found guilty of Manſlaughter. *Anſwer.*

II. *A.* conſcious of an Animoſity between *B* and *C*, *A* accompanieth *B*, where *C* happens to come, and *B.* kills him: Whether *A* without any Malice to *C*, or any actual Hand in his Death, be guilty of Murder?

Anſwer. A is not guilty of Murder; for it appears the Meeting was caſual, and there was no Deſign in *A* againſt *C*; and therefore, though *A* did know of the Malice between *B* and *C*, yet it was not unlawful for *A* to keep Company with *B*; but he might go with him any where, if it was not upon a Deſign againſt *C:* And therefore, as the Caſe was put, there was not any Offence in *A.*

III. Whether if *A* heard *B* threaten to kill *C*, and ſome Days after *A* ſhall be with *B* upon ſome other Deſign, where *C* ſhall paſs by, or come into the Place where *A* and *B* are, and *C* ſhall be killed by *B*, *A* ſtanding by without contributing to the Fact, his Sword not being drawn, or any Malice ever appearing on *A's* Part againſt *C*; Whether *A* will be guilty of the Murder of *C*?

Anſwer. A in this Caſe would not be guilty either of Murder or Manſlaughter.

IV. Whether a Perſon knowing of the Deſign of another to lie in wait to aſſault a third Man, who happens to be killed (when the Perſon who knew of the Deſign is preſent) be guilty of the ſame Crime with the Party who had the Deſign and killed him, though he had no actual Hand in his Death?

Anſwer. This is neither Murder or Manſlaughter; but if he that knew of the Deſign, had adviſed it, or agreed to it, or lay in wait for it, or reſolved to meet the third Perſon with him that killed him, It would have been Murder.

V. Whether a Perſon knowing of the Deſign of another to lie in wait to aſſault a third Perſon, and accompanying him in that Deſign, if it ſhall happen that the third Perſon be killed at that Time, in the Preſence of him who knew of that Deſign, and accompanied the other in it, be guilty in Law of the ſame Crime with the Party who had that Deſign and killed him, *though he had no actual Hand in his Death?*

Anſwer. If a Perſon is Privy to a felonious Deſign, or to a Deſign of committing any perſonal Violence, and accompanieth the Party in putting that Deſign in Execution, though he may think it will not extend ſo far as Death, but only Beating, and hath no perſonal Hand, or doth otherwiſe contribute to it than by his being with the other Perſon, when he executeth his Deſign of aſſaulting the Party; If the Party dieth, they are both guilty of Murder: For by his accompanying him in the Deſign, he ſhews his Approbation of it, and gives the Party

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Party more Courage to put it in Execution: Which is an aiding, abetting, aſſiſting, and comforting of him, as laid in the Indictment.

VI. If a Perſon be preſent, named *William*, when *Thomas* ſaid he would ſtab *John*, upon which *William* ſaid he would ſtand by his Friend; and afterwards *Thomas* doth actually murder *John*, and *William* is preſent at the Murder: Whether the Law will make *William* equally guilty with *Thomas*? Or what Crime is *William* guilty off?

Anſwer. This is rather a Caſe of Fact than Law: For if *William* was deſignedly preſent with the other that committed the Murder, then it would be Murder in *William:* And if there was no Evidence to prove upon what Account he was preſent, it might be preſumed he was preſent in Purſuance of his former Agreement: But if it appeared he did not meet in Purſuance of that Agreement then it might not be murder. That this was all Matter of Evidence, and reſted upon the Conſcience, of thoſe that were to try the Priſoner.

VII. If *A* accompanieth *B* in an unlawful Action, in which *C.* is not concerned, and *C* happeneth to come in the Way of *B*, after the firſt Action is wholly over, and happeneth to be killed by *B*, without the Aſſiſtance of *A*, whether *A* is guilty of that Man's Murder? 1692. 4 W. & W.

Anſwer. As this Caſe is ſtated, *A* is not guilty of Murder.

Then the Lords adjourned.

The Lords coming into the Court erected in *Weſtminſter-hall* again on *Saturday* the 4th of *February*, the Lord High Steward demanded of the youngeſt Baron, (Lord *Lemſter*) Whether my Lord *Mohun* was guilty of the Murder of *William Mountford?* and the Lord *Lemſter* ſtanding up uncovered, and laying his Right Hand on his Breaſt, ſaid, *Not Guilty, upon my Honour.*

The ſame Queſtion having been propoſed to the reſt of the Lords in their Order; the Lord High Steward declared, that fourteen of their Lordſhips had found my Lord *Mohun* guilty, and ſixty-nine had found him *Not Guilty.* After which the Priſoner being called to the Bar, the Lord High Steward acquainted him, that their Lordſhips Judgments was that he was *Not Guilty*; and thereupon he was diſcharged-----Then the Lord High Steward ſtanding up, broke his Staff, whereby his Commiſſion was diſſolved, and the Lords returned to their Houſe above. *Lord* Mohun *acquitted.*

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Proceedings of the COMMONS againſt the Judges for giving Judgment againſt their Serjeant, who pleaded an Order of the Houſe to the Juriſdiction of the Court of *King's-Bench*, in *July* 1689, 1 *W.* & *M.*

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Proceedings againſt the Judges, Pemberton *and* Jones. *Vote of the Commons.*

IT was reſolved by the Houſe of Commons, on the 6th of *July*, 1 *W. & M.* 1689. That the Judgment of the Court of *King's-Bench*, in *Eaſter* Term, 34 *Car.* II. upon the Plea of *John Topham*, (their Serjeant) at the Suit of *John Jay*, to the Juriſdiction of that Court, and alſo the Judgments given againſt the ſaid *Topham* at the Suit of *Samuel Verdon*, *John Hilliard*, and others, were illegal, and a Violation of the Privileges of Parliament, and pernicious to the Rights of Parliament. And being informed that Sir *Francis Pemberton* and Sir *Thomas Jones* were Judges of the *King's-Bench* at that Time, ordered them to attend the Houſe, which they did accordingly: And it was demanded of them, upon what Reaſons they gave that Judgment againſt *Topham* at the Suit of *Jay*.

Sir Francis Pemberton's *Apology.*

Sir *Francis Pemberton*, on the 19th of *July*, gave the Houſe the Reaſons that induced him to give that Judgment: He ſaid, this was an Action of Treſpaſs brought by *Jay* againſt *Topham*, for arreſting and detaining him in Priſon ten Days, and keeping him till he paid him Thirty Pounds to let him out of Priſon.

To this *Topham* the Defendant pleaded, That there was an Order of the Houſe of Commons for taking *Jay* into Cuſtody, and bringing him to the Bar of that Houſe; and that he took him and detained him by Virtue of that Order: And this he pleaded to the Juriſdiction of the Court; and that they had nothing to do with it. Upon which there was a Demurer, and upon the Demurer it was adjudged he ſhould anſwer over, that is, he ſhould plead in Bar of the Action---Sir *Francis* ſaid, He acknowledged that this Houſe was a ſuperior Court, of a higher Nature than the *King's-Bench*, and of a greater Authority; and that the *King's-Bench* had nothing to do to inſpect the Actions of this Houſe: But then he conſidered, where a Juſtification was made even by an Act of Parliament, which was an higher Authority than an Order of either Houſe, ſuch Acts gave ſome Power to plead ſummarily, and others to plead Not Guilty, and juſtify by giving the ſpecial Matter in Evidence: Yet he never heard there was any Proviſion made for pleading to the Juriſdiction of any Court: He thought, therefore that the High Authority of the Houſe of Commons could not exempt the *King's-Bench*, being a Court of Law, from examining whether what was alledged to be done, was done in purſuance of their Authority or not.

He conſidered alſo, If this Plea was overruled, the Defendant was not prejudiced; for the ſame Matter might be pleaded in way of Bar, and would have been admitted a good Bar, if true: They did not diſpute the Legality or Power of their Orders, but whether *Topham* the Defendant had purſued the Order of the Houſe; and that was the Thing properly examinable by them: But it would be a monſtrous Miſchief to the Plaintiffs if ſuch a Plea was allowed to the Juriſdiction; for if Mr. *Topham* had abuſed his Authority, and had been guilty of any Outrage; if when he had an Order to bring a Member to the Bar of the Houſe, he ſhould not bring him thither, but extort Money from him, It was very certain he ought to be

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be punished, and make satisfaction to the Party injured: But during a Recess of Parliament he could have no Satisfaction; and if a Parliament was not held in six or seven Years he would lose his Action.

But further, If the *King's-Bench* could not examine this Case, the Plaintiff (the Party wronged) must be without Remedy; for if the Commons could punish their Offences, they could not give Damages to the Party injured: Nay, they could not examine the Witnesses upon Oath in order to assess Damages.

That when he considered this Case, he saw a great Mischief on one Side, if the ordinary Courts of Law had no Jurisdiction; but could observe none, if they had: There could be no Hurt in examining, if the Orders of the House were fairly executed; and he was confident the House would not encourage an Abuse of their Orders: And these being his Apprehensions, he thought he was bound to over-rule the Plea to the Jurisdiction of the Court. If he was mistaken, it was an Error of his Judgment; he had no Design to meddle with the Affairs of the House, but to do Justice.

Mr. Speaker demanded, If he delivered these Reasons when he gave Judgment? for, if he had this would have been some Light to their Serjeant to have pleaded afterwards.

Sir *Francis* answered, He was sure the Serjeant was told he might have pleaded this Matter in Bar, and this would have been a good Bar of the Action, which he thought Direction enough.

Mr. Speaker demanded, If it was not usual in Cases of great Moment, as this was, to argue the Point upon giving Judgment? Sir *Francis* answered, It was so, if they would argue it; but when the Counsel on both Sides let it go, they examined no further. Then Sir *Francis* withdrew, and Sir *Thomas Jones* being brought in, the Speaker demanded, upon what Reasons they over-ruled the Plea to the Jurisdiction of the Court?

Sir Thomas Jones's *Evidence.*

Sir *Thomas* seriously protested before God, and that Honourable House, that he never designed to interfere with the Authority and Privileges of the House: He always conceived, that for any thing transacted in that House, no other Court had any Jurisdiction to hear and determine it. But he thought there was a Difference to be taken in Matters that were meerly transacted by the House, and those complicated of the Authority and Commands of the House; and of the *Execution* of the Authority and Command of the House abroad; which was the Case before the *King's-Bench.*

Mr. *Topham* was complained of, that he not only imprisoned the Plaintiff *Jay*, but kept him in Prison till he paid 30 *l.* And he humbly conceived this Declaration ought to have been answered, and not put off with a Plea to the Jurisdiction of the Court: That this Court was most proper to try it, which could try and determine the whole Merits of the Cause between them, especially where the Privileges of the House could not be injured. And he thought Mr. *Topham* was advised to plead this Matter in Bar, wherein there would have been a due regard paid to the Authority of the House: If he had but produced a Copy of their Journal, that would have been sufficient. But Mr. *Topham* did not think fit to make any Answer to the Complaint of his taking 30 *l.* for which, if it was an Extortion upon the Subject, he was sure that the House, which was entrusted with the Subjects Rights, would not have suffered the Party wronged to have gone without a Remedy and Satisfaction: And he never observed, when he was an unworthy Member of that House, that they ever gave Damages to a Person that had been injured by their Officer: And besides, at this Time the House was risen, and could do nothing in it.

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He observed also, as Sir *Francis* had done, that the Authority of an Act of Parliament was superior to that of the House of Commons: But if a Man did any thing by Virtue of such an Act, for Instance, under the Commissioners of Sewers, or in the executing a Rate for the Poor, or levying of a Poll-Tax, and he be charged with exceeding or going beyond his Authority, he must either plead in Bar especially, or, in many Cases (where the Statute allows it) generally, and give the special Matter in Evidence: But it was never known that such an Officer, though appointed and authorized by Act of Parliament, ever pleaded to the Jurisdiction of the Court, and insisted they should not take Cognizance of the Matter, because he acted by Virtue of an Act of Parliament: And consequently, he thought, where there was only a Command of the House to do a Thing, and there was an Abuse of their Order in exacting the Thirty Pounds complained of, they might take Cognizance of it, though they should have given all imaginable Reverence to their Order, if there had been a Plea in Bar.

Upon these Reasons it was he gave his Opinion that the Plea to the Jurisdiction of the Court should be over-ruled; and if it was not agreeable to their Judgment, he humbly begged Pardon.

Sir *Francis* and Sir *Thomas* being withdrawn, the House resolved that Sir *Francis Pemberton*, giving Judgment to over-rule the Plea to the Jurisdiction of the Court of *King's-Bench*, in the Case between *Jay* and *Topham*, had broken the Privileges of the House; and the like Resolve passed in Relation to Sir *Thomas Jones.*

The Judges taken into Custody.

And, by Order of the House, both Sir *Francis Pemberton* and Sir *Thomas Jones* were taken into Custody for the said Breach of Privilege, and remained confined till the Prorogation of the Parliament, which happened soon after.

This Case is so very plain that it needs no Remarks; and if it did, perhaps it may not be prudent to touch upon the Privileges of this awful Senate.

Knowles *and* Lawson.

The Proceedings in Knowles *and* Lawson *being concluded in the Year* 1697, *will be treated of altogether in that Year.*

Duke of Norfolk's *Divorce.*

The Proceedings in the Divorce between the Duke and Dutchess of Norfolk, *began in the House*

1689. 1 W. & M. *House of Lords on the 7th of* January 1671-2, *but not being concluded till the Year* 1699, *I shall defer giving an Account of them till that Year, when they will appear altogether.* 1689. 1 W. & M.

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Proceedings againſt the Biſhop of *Rocheſter*, before the LORDS of the Privy Council, in Relation to a Plot to reſtore King JAMES II. 1692. 4 *W.* & *M.*

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Proceedings againſt Dr. Sprat, *Biſhop of* Rocheſter.

THE Proceedings againſt Dr. *Sprat*, Biſhop of *Rocheſter*, ſtand next in the State Trials: It is a Narrative of the Biſhop's, wherein he relates, that he was apprehended on the 7th of *May*, at his Houſe at *Bromley*, by a Meſſenger, accompanied by Dr. *Dyve*, Clerk of the Council: That they had a Warrant from the Privy Council to apprehend him on Suſpicion of Treaſon, and ſearched his Perſon and his Houſe at *Bromley* very narrowly, and then brought him to his Houſe at *Weſtminſter*; and he was examined before a Committee of Council the next Day: That he was afterwards ſent to his Houſe at *Weſtminſter* again, where he remained till the 18th in the Cuſtody of a Meſſenger, and under a Guard of Soldiers.

That at his Examination before the Council it was demanded, If he compoſed a Declaration againſt the intended Deſcent of King *James*, or drew up Heads for ſuch a Declaration, or was ever deſired to undertake ſuch a Work? Whether he ever held any Correſpondence with *France*, or ſigned an Aſſociation for Reſtoring King *James*? Or if he knew of ſuch an Aſſociation, or any Perſons that had ſigned it?

To all which the Biſhop anſwered in the Negative; and on the 19th of *May*, was ſuffered to return to *Bromley*.

That on the 8th of *June*, the Lord *Nottingham*, Secretary of State, ſent him a Letter to appear before the Council the next Day; and upon his Attendance, he was confronted with one *Blackhead*, who pretended he brought the Biſhop a Letter to *Bromley*, from one *Young*, and received an Anſwer to it, for *Young*, from the Biſhop: And his Lordſhip being asked if he knew *Blackhead*, he did not remember at firſt, but recollected afterwards, that he brought him a Letter from a Clergyman in *Buckinghamſhire*, to enquire whether he ordained a certain Perſon that deſired to be the Curate, becauſe he ſuſpected his Orders were counterfeited; and that he wrote that Clergyman an Anſwer, that he had ſearched his Books, and could aſſure him he never ordained any ſuch Perſon.

Blackhead, on the contrary affirmed, that the Letter he carried to the Biſhop, was from *Young*, and the Biſhop anſwered directly to *Young*: But the Biſhop's Secretary, Mr. *Moore*, being called in, atteſted that he remembered *Blackhead*'s bringing the Letter to *Bromley*: That it was ſigned by one *Hooke*, repreſented by *Blackhead*, to be a *Buckinghamſhire* Clergyman; and the Biſhop wrote an Anſwer, and directed it to the ſame *Hooke*, ſending it by *Blackhead*. But *Blackhead* ſtill perſiſted, he brought the Biſhop a Letter from *Young*, and no other.

The Biſhop was further examined, If he had written a Letter to the Earl of *Marlborough* within 3 Months; or received any Letter or Papers from him? To which the Biſhop anſwered in the Negative.

That on *Monday* the 13th of *June*, the Biſhop attended the Council again, and was confronted with another Man: And it being demanded if he knew him, the Biſhop proteſted he never ſaw him: Then he was informed by the Council that this was *Robert Young*, whom *Blackhead* mentioned: Whereupon the Biſhop ſaid, that ſome Years before, one *Robert Young* wrote to him from *Newgate*, pretending to be a Clergyman; and informing him that he and his Wife were in Priſon, upon a falſe Accuſation, and deſired his Lordſhip would recollect, that he had officiated ſome Weeks for the Chaplain of *Bromley*-College, and preached in the Pariſh Church there: Deſired he would ſend him a Certificate of this, and it would be of Service to him; and withal begged he would ſend him ſomething, out of Charity, to relieve him and his Wife in their great Diſtreſs. But the Biſhop ſent him no Anſwer, becauſe he had not the leaſt Remembrance of him himſelf; and upon Enquiry, found he did not deſerve any. Then the Biſhop produced the very Letter *Blackhead* brought him to *Bromley*, being of the ſame Tenor as the Biſhop related; and *Blackhead* at length confeſſed it to be the ſame Letter: He confeſſed alſo that *Young* directed him to leave a Treaſonable Aſſociation in the Biſhop's Houſe at *Bromley*; and that he left it in a Flower-Pot, in the Parlour Chimney; but the Meſſenger not finding it when the Biſhop was apprehended, he *(Blackhead)* made another Pretence to go to *Bromley*, while the Biſhop was confined, and brought it from thence; for *Young* ſaid that was the Original, and he brought it to the Lords of the Council, and it lying upon the Council Table, at this Time, the Biſhop had a Sight of it, and ſays it was of the following Tenor.

The Subſtance of the Aſſociation.

" That We whoſe Names were ſubſcribed,
" ſhould ſolemnly promiſe, in the Preſence of
" God, to contribute our utmoſt Aſſiſtance
" towards King *James*'s Recovery of his
" Kingdoms. That to this End, we would
" have ready to meet him at his Landing,
" Thirty Thouſand Men, well armed. That
" we would ſeize upon the Perſon of the
" Princeſs of *Orange*, dead or alive; and
" take Care that ſome ſtrong Garriſon ſhould
" be forthwith delivered into his Hands; and
" furniſh him with a conſiderable Sum of
" Money, for the Support of his Army:"
" *Or to this Senſe.*"
March 20, --- 92.

And

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And the forged Subscriptions were, as he remembered, after this Manner.

Marlborough. Salisbury. *W. Cant.*
Basil Firebrace. *Tho. Roffen.*
Cornbury.
John Wilcoxe.

Upon Sight of this Paper, the Bishop adds, He was amazed to see his Hand so well counterfeited, and observed that there was another innocent Person, whose Hand he knew very well, that was still more nicely forged, and that was Archbishop *Sancroft*'s; and the Earl of *Marlborough*'s Hand also was well forged.

Young being called in again, and examined, If the Letter *Blackhead* carried the Bishop of *Rochester*, was of his Hand-Writing, denied it was, though *Blackhead* attested to his Face it was; and *Young* had the Impudence to say, This was a Conspiracy between *Blackhead* and the Bishop, to baffle the Discovery of the Plot: And when the Lords of the Council laughed at the senseless Suggestion, *Young* still persisted, that he believed the Bishop had taken *Blackhead* off. Then the Letter *Young* had sent the Bishop, and the Association, being compared together, appeared to have been written by the same Hand. However, *Young* still denied he wrote the Letter; and the Bishop assures his Readers, that, during the whole Examination, though *Young*'s Forgery was so evidently proved by the Confession of his Accomplice, and otherwise, yet he behaved himself with a daring unconcerned Confidence, a bold erect Countenance, though it had naturally very much of the Villain in it. His whole Carriage was such as became the Discipline he had undergone for many Years, having been almost a constant Inhabitant in some of the common Jayls in *England* and *Ireland*.

He was executed afterwards at *Tyburn*, on the 19th of *April*, 1700, for Coining, when he delivered a Paper to the Sheriff, wherein he says, "I think myself especially obliged to "discover to the Publick, how far I was concerned in that pretended Plot, supposed to "be carried on by the Earls of *Marlborough* "and *Salisbury*, the Lord Bishop of *Roches-* "*ter*, and some others; the Truth of which, "I call God to witness, is as follows. I was "committed to *Newgate*, till I discharged a "certain Fine imposed on me; during my "Confinement, one *Henry Pearson*, a Surgeon, "I think, was committed to the same Place "for Debt; he perceiving me to be very ex- "pert in counterfeiting Hands, told me, that "if I could contrive a sham Plot, and father "it upon those Noble Peers, I might soon "have Money enough to pay my Fine. Be- "ing in very low Circumstances, I readily "consented to this Proposal; but told him, "nothing could be done in that Matter, till "he was released, which in a short Time was "effected. As soon as he was at Liberty, he "employed one *Blackhead*, to carry Letters "between us. I happened, by a certain Stra- "tagem, to see the Earl of *Marlborough*'s "Hand; this I counterfeited so cunningly, "that it was very difficult to discern the true "from the false: Then I drew up an Associa- "tion, and affixed to it the Hands of the "Earls of *Marlborough* and *Salisbury*, as also "Sir *Basil Firebrace*'s; the Lord Bishop of "*Rochester*'s, and the Lord *Cornbury*'s was "wrote by another Hand, according to my "Request. And that the more Credit might "be given to this pretended Plot, I wrote "several Letters in the Name of the Lord "*Marlborough* (for I was perfectly acquaint- "ed with his Way of Writing) supposed to "be directed to me, which *Blackhead* used to "bring me again; and yet he swore before "the Lords of the Council, that the said Earl "sent them to me; whereas, to his Know- "ledge, I myself forged them, and ordered "them to be sent after that Manner. This "is the Truth of that Business, which has "made so great a Noise in the World. I "humbly beg the Pardon of those Noble Peers, "and do declare once more, in the Presence "of God, that I did not set the Lord Bishop "of *Rochester*'s, or the Lord *Cornbury*'s Hand "to the said Paper; yet it was done by my "Consent, by another Person."

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Instead of making any Observations of my own on these Proceedings, I shall present the Reader with the Remarks of a certain Writer, in a Letter said to be written to the Lord Chief Justice *Holt*, wherein that Gentleman says,

Remarks on the Proceedings against the Bishop of Rochester.

"I crave Liberty to remind you what "*Young* the Parson, in Conjunction with *Black-* "*head*, had contrived, in order to the Mur- "dering several of the first Quality in the "Kingdom, besides divers Gentlemen of low- "er Degree: For these Fellows, judging it too "little and mean for Persons of their Tran- "scendency in Villany, meerly to swear that "such and such had conspired and combined "to restore and re-establish King *James*, had "the audacious and unprecedented Impudence "to forge an Association, and to counterfeit "and affix the Hands and Names of Honour- "able Peers, and worthy Persons unto it; "importing their having mutually and jointly "undertook to dispossess King *William*, and "to bring back, and re-advance King *James*. "And though it was morally impossible, as "well as altogether incredible, that, had there "been such a Design, so concerted, Wretches "of the Meanness of *Young* and *Blackhead*, "should have been admitted upon a Secret "of such Importance in itself, and whereof "the Discovery would have rendered those "concerned, liable to the Loss of Life, Ho- "nour, and Estates: Yet not only with what "Easiness, but Letchery, was the Belief of "it entertained, by divers of our supreme "and reputed wise Ministers. And notwith- "standing its being, in the whole Matter of "it, more ludicrous than Farce, or *Bartho-* "*lomew-Fair-Shew*, than to be entertained by "Statesmen; yet with what Seriousness and "Gravity was it brought to the Council- "Board, and received there as a Subject "worthy of weighty and solemn Debate!

See a Letter to the Right Honourable Sir John Holt, *Knight, Lord Chief Justice of the* King's Bench, *occasioned by the Noise of a Plot. The second Edition.* 1694. *Page the* 10*th.*

And

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And in the ſame Letter, Page 11 and 12. The Author ſays, " Nor could the Miniſters " be ſo great Strangers to the infamous Cha- " racters of the Witneſſes (whoſe many and " notorious Crimes had ſufficiently publiſhed " them before, throughout the whole Nation, " as Raſcals, who had forfeited all Right to " be believed and credited) as to hope to have " their Integrity and Righteouſneſs juſtified, " in ſeizing and proſecuting any upon their " Teſtimony: And yet, had it not been for " the miſſing of the forged Paper, when it " was at firſt ſo narrowly ſearched for, at " the Biſhop of *Rocheſter*'s, where one of " the Rogues traitorouſly and felonioufly " lodged it; it is ſcarce to be conceived, how " ſome of our Stateſmen were prepared to " have puſhed on that Affair to the Impri- " ſonment of ſeveral. But that Miſadven- " ture, together with the Defences which the " aforeſaid eloquent Biſhop, after his Appre- " henſion, made at his being examined " before the Council, rendered them more " ſlow and wary in their Proceedings: And " thereupon, through the gaining the Reſpite " of a little Time, there was an Opportuni- " ty obtained, not only of diſcovering and " laying open the many infamous and horrid " Crimes, whereof the Rogues had at other " Times been guilty, but of fully detecting " the Forgery of the Aſſociation, and where " they had ſecretly laid it in the Biſhop's " Houſe, in order to have deſtroyed him and " others, in caſe it had been found by the " Clerk of the Council and the Meſſengers, " when it was ſo induſtriouſly ſought for. " And truly, my Lord, had not *Young* la- " boured under a ſtrange Defect of Morals, " he was incomparably qualified in all other " Reſpects, to have been a ſelect, ſingular, " and ſtanding Witneſs for the State: For as " he has a Sufficiency of Wit, and Preſence " of Mind, to be able to give Things the " beſt Gloſs, and readieſt Turn of Thought, " ſo he is furniſhed with a larger Stock of " Impudence and Aſſurance than moſt Men " in the World are: Of which your Lord- " ſhip was an aſtoniſhed Witneſs, when you " had him before you at the Bar, to be tried " for the Forgery which I have mentioned, " and to be condemned to the two gentle and " feeble Puniſhment which the Law hath or- " dained for it. For with what Confidence " did he ſtand, not only under the Load of " a thouſand infamous Actions, of which all " the Court knew him to have been guilty; " but under the fulleſt and cleareſt Proof of " the maliciousForgery for which he was then " arraigned. Yea, with what Effrontery, and " Air of Impudence, to the Amazement of " all there, did he continue to aſſert his own " Innocence,and perſevere in his Crimination " of others? But that which filleth Men " moſt with Sorrow, in Reference to that " Tranſaction, and which keeps them under " diſquieting Fears ever ſince, is, that though " *Young* and *Blackhead* were Inſtruments in " it, yet People of another Figure muſt have " been the firſt Contrivers and Authors of " it: And the handing Money to *Blackhead*, " while kept in Cuſtody by *Allen* the Meſ- " ſenger, and conniving at his Eſcape from " thence, gives us more than a Suſpicion of " it, and little leſs than a moral Certainty: " For that Rogue, having been the Tool " employed too with *Young*, by the Superior " Managers, and having threatned to ſpeak, " in caſe given up, and abandoned to a pub- " lick Puniſhment, it was ſo ordered, that he " might not only be permitted to get away, " but be ſheltered and maintained in *Ireland*, " whither he withdrew; and from whence the " Government might have eaſily brought him " back, were there not a Myſtery in that " Affair, which it is not for ſome People's " Honour to have unravelled. Nor was the " Meſſenger, out of whoſe Houſe and Cu- " ſtody he made his Eſcape, ever puniſhed " for Careleſſneſs and Neglect; but after a " little Menacing and Reprimand, which was " mere Grimace, he hath been treated all " along ſince with more diſtinguiſhed Favours " than fell to the Share of his Fellow-Offi- " cers. Neither durſt ſuch mean and creep- " ing Wretches as *Young* and *Blackhead* (how " impudent and malicious ſoever they are) " have attacked Perſons of the Earl of *Marl- " borough* and the Biſhop of *Rocheſter*'s Rank " and Quality, and who had merited ſo well " of the Government, and were believed at " that Time to ſtand in all Terms of Fair- " neſs with it, had they not been prompted, " guided, and encouraged to it, by Perſons of " Authority, Grandeur, and Eminency. And " had the Villains acted meerly under their " own Conduct, and by the Influence of " Perſonal Malice and Avarice, they would " have ſingled out ſuch to be accuſed as are " held Indiſcreet, Talkative and Raſh, and " with whom it might have been likely for " them to have had ſome Converſation; and " not Perſons of the greateſt Prudence, Cir- " cumſpection, and Reſervedneſs, of any in " the Kingdom, and into whoſe Society it " was morally impoſſible that any ſhould " judge them to have been admitted, nor ſo " much as into their Preſence, unleſs as Beg- " gars and indigent Supplicants. So that this " Conſpiracy, by ſuborning two infamous " Raſcals, and of obtaining thereby Credit to " a Plot, upon the Belief of which, ſeveral " Noble, Reverend, and Worthy Perſons, " were to have been involved under Guilt of " Ruin, may ſerve to inſtruct your Lordſhip " not to be haſty and forward in giving Credit " to the preſent importunate and noiſy Cla- " mours, and to make you extreamly wary " how you proceed to the Conviction and " Condemnation of thoſe that are accuſed, " and threatned to be arraigned.

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The

1693. 5 W. & M.

The Trial of WILLIAM ANDERTON, Printer, for *High Treaſon*, at the *Old-Baily*, *London*, on the 1ſt and 3d of *Jun*, 1693. 5 *W.* & *M.*

1693. 5 W. & M.

Anderton's Trial. An imperfect Piece.

THIS which is called *Anderton*'s Trial is a very imperfect Piece, and clogged with a great deal of Rubbiſh, not fit to be bound up with the State Trials, and was only inſerted by the Bookſellers to enhance the Price of the Work, or for the Advantage of the Perſon they employed in compiling this Volume. They have neither given us the Indictment or the Evidence regularly, or the Obſervations of the Counſel or Judges. We only underſtand that the Indictment charged the Priſoner with High Treaſon, in compaſſing the King and Queen's Deaths, and the Subverſion of the Government: And that the Overt Acts laid of this Treaſon, were his printing ſome Books tending to incite a Rebellion; the one of them intitled, *Remarks upon the preſent Confederacy and the Revolution in* England: And another intitled, *A French Conqueſt neither deſirable or practicable.* But they have given us none of the treaſonable or obnoxious Paſſages; and therefore I ſhall diſmiſs this pretended Trial without taking any further Notice of it, than that the Priſoner was convicted of High Treaſon, and executed on *Friday* the 16th of *June*, 1693.

1693. 5 W. & M.

Proceedings of the Privy Council againſt Dr. OLDYS, the King's Advocate, and other Doctors of the Commons, for refuſing to proſecute JOHN GOLDING and others, as Traitors and Pirates, who acted under Commiſſions from the *French* King, and King JAMES II. *Sept.* 1693. 5 *W.* & *M.*

1693. 5 W. & M.

Proceedings againſt Dr. Oldys.

THE Lords of the Admiralty, in the Month of *November* 1692, commanded Dr. *Oldys* to proſecute the ſaid *John Golding*, and other Priſoners, for High Treaſon and Piracy, in taking ſeveral *Engliſh* Ships, under Colour of a Commiſſion from the *French* King (an Enemy to *England*) and another Commiſſion from King *James* as King of *England*, and carrying the ſaid Ships into *Breſt*, where they were condemned as lawful Prize by *Thomas Shadford*, Judge of the Admiralty there for King *James*.

Dr. *Oldys* hereupon gave his Opinion in Writing, That the Priſoners were not Pirates, and ought not to be proceeded againſt as ſuch. Whereupon Dr. *Oldys*, Sir *Thomas Pinfold*, Dr. *Walker*, Dr. *Littleton*, and Dr. *Tindall*, were ſummoned before a Committee of Council; and on their Appearance it was demanded of Dr. *Oldys*, Why he refuſed to proſecute the Priſoners?

Dr. *Oldys* anſwered, Pirates were the common Enemies of Mankind, pretending to no legal Authority; but theſe Priſoners ſhewed a Commiſſion ſigned *J. R.* dated at the Court of St. *Germain*'s, together with Articles and Inſtructions annexed in the ſame Form that Privateers had, giving Caution and Security to bring their Prizes into the Court of Admiralty for Judgment before *Thomas Shadford*, at *Breſt*, or elſewhere.

Mr. Secretary *Trenchard* anſwered, King *James* had left his Sovereignty, having parted with his Crown, and conſequently with the Power of granting Commiſſions.

Doctor *Oldys* replied, A King might be depoſed, but could not loſe his Right: He had ſtill a Right to make War, and to grant Letters of Mart and Reprizal.

Mr. Secretary *Trenchard* ſaid, That might be Law, where a King was depoſed; but what if he abdicated?

Dr. *Oldys* anſwered, if he really abdicated, as the Emperor *Charles* V, and *Chriſtina* Queen of *Sweden* had done, he was no more than a private Perſon, and could not legally grant Commiſſions: But whether a Privateer acting by a Commiſſion, granted him *de facto* by King *James*, and not knowing he had abdicated, Whether ſuch an Error would not excuſe a *pæna delicti*, was the Queſtion? for that a Reputable Power was equivalent to a Real one in ſuch a Caſe. It was notorious that K. *James* was once a lawful King, acknowledged by them and all the World; and when his Army deſerted him, he fled to his Ally in *France*, for Aid: Then went to *Ireland*, to recover his Kingdoms, as his Declarations ſet forth. There he granted Commiſſions, and his Soldiers who fought under thoſe Commiſſions, and were taken, were not treated as Thieves and Robbers, but as Priſoners of War, whereby his Claim ſeemed to be allowed by his Enemies. Upon his Return to *France*, thoſe who ſerved under him in *Ireland*, repaired thither to King *James*, believing him ſtill impowered to grant Commiſſions, as well by Sea as Land, and upon Receipt of Commiſſions from him, came out *animo hoſtili*, as Privateers, *non animo furandi*, as Pirates: That a colourable Authority remaining in King *James*, would excuſe thoſe who acted under him, from being Pirates, ſince the Abdication was never publiſhed, nor ſo much as heard of in *France*. And ſince in Piracy, which deſerves *ultimum ſupplicium*, if proved, all favourable Allowances ought to be made, and a general Acknowledgment of a falſe Authority in another Country (where the Commiſſions were taken) would free them from a felonious Intent in taking them, and conſequently from Piracy; King *James* was owned and reputed a King in *France*; and therefore in this Caſe it was undoubted Law, *Communis error facit jus.*

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Here Mr. Secretary *Trenchard*, and Lord *Falkland* in a great Heat ſaid, Pray, Doctor, let us deal more cloſely with you, for your Reaſons amount to High-Treaſon: Pray, what do you think of the Abdication?

The Doctor anſwered, That was an odious enſnaring Queſtion; however, perhaps he thought of the Abdication as they did; for ſince it was voted, it bound, at leaſt in *England:* But thoſe Gentlemen were in a foreign Country, and knew nothing of it; and though King *James* was not King here, yet the Colour of Authority remaining, and a common Reputation of him as a King there, excuſed them.

It being demanded of Sir *Tho. Pinfold*, what he had to ſay to it, the Doctor anſwerd, He was of the ſame Opinion. Dr. *Newton* and Dr. *Walker* did not declare their Opinions, but deſired Time to conſider of it; and Dr. *Newton* ſaid, it was againſt his Conſcience to have a Hand in Blood. 1693. 5 W. & M.

Dr. *Littleton*, on the contrary, held, That King *James* was now a private Perſon; we had no War with him, or he with us; or if he deſigned it, *Ærarium non habet*, He was not in a Capacity of making War, he could neither ſend or receive Ambaſſadors, and thoſe who adhered to him were not Enemies but Rogues, and conſequently theſe Perſons were not Privateers, but Pirates. Dr. *Tindall* declared himſelf of Dr. *Littleton's* Opinion.

In the End, Dr. *Olyds* was removed from his Place of King's Advocate, and Dr. *Littleton* ſucceeding him, tried the Priſoners, and condemned them; and, according to the Editor of the Eighth Volume of the State Trials, ſeveral of them were executed.

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The Trial of ROBERT CHARNOCK and EDWARD KING Gentlemen, and of THOMAS KEYS Trumpeter, for *High-Treaſon*, at the *Old-Baily*, *London*, on *March* 11, 1695. 8 *W.* III.

1695. 8 W. III.

Charnock's *Trial.*

The Indictment.

THE Indictment charges the Priſoners with High-Treaſon, in compaſſing the Death of the King, and the Subverſion of the Government; and the Overt Acts laid to prove theſe Treaſons, were their meeting, conſulting, and agreeing, on the 10th of *February*, then laſt paſt, at the Pariſh of St. *Clement Danes*, in the County of *Middleſex*, with divers other falſe Traitors, to aſſaſſinate the King as he rode in his Coach, in the following Manner, *viz.* That forty Horſemen (of which Number they were to be Part) ſhould lie in Ambuſh, and ſet upon the King's Coach, and the Guards that were to attend him in his Return from Hunting; and that they bought Horſes, Arms, *&c.* for executing the ſaid Deſign.

Denied Counſel, &c.

At their Arraignment Mr. *Charnock* inſiſted on their having Counſel, and a Copy of their Indictment, according to a late Act; and being told, that Act did not commence till *Lady-Day*, he obſerved, that the Preamble of that Act ſaid, *That this was reaſonable*; and if it was ſo, it was as reaſonable to Day as it would be a Fortnight hence: But this was over-ruled by the Court, and they were allowed neither.

Denied further Time, or a Sollicitor.

Then they moved for further Time for their Trial; but this alſo was denied: They were alſo denied a Sollicitor to ſtand by them and aſſiſt them: After which the Attorney General opened the Evidence.

The Attorney Gen. (Sir Thomas Trevors*) opens the Evidence.*

Mr. *Attorney General.* My Lord, and you Gentlemen of the Jury, theſe Gentlemen at the Bar ſtand indicted for a moſt horrid and barbarous Conſpiracy, to aſſaſſinate and murder His Majeſty's Royal Perſon. Gentlemen, this Aſſaſſination was to be ſeconded with an Invaſion from *France*, where Troops lay ready at *Calais*, as ſoon as the diſmal Stroke was given, to have landed upon our Coaſts; which if it had taken Effect, we had not only ſuffered that moſt unſpeakable Loſs of the King, but it would have made an End of all our Liberties and Laws at once.

Gentlemen, this Offence, in its Nature, is ſo horrid and barbarous, that as it needs no Aggravation, ſo it is incapable of having any by any Words that can be uſed; for the very naming of an Aſſaſſination of a King, carries ſuch Horror and Deteſtation in it ſelf, to all honeſt People, that it is impoſſible to aggravate it by any Expreſſions that can be uſed about it. But there is this peculiar Conſideration to be had, by all *Engliſhmen* who love their Country, that this deſigned Aſſaſſination upon the Perſon of his preſent Majeſty, was to take away the Life of a King who, every body knows, firſt ventured his own Life to reſtore our Religion, Laws and Liberties, when they were juſt expiring under the Oppreſſion of Popery and Tyranny. And as he ventured his Life firſt to reſtore them, ſo he has ſince, upon all Occaſions, with the utmoſt Hazard, expoſed his Royal Perſon to the moſt imminent Dangers, for the preſerving and maintaining our Religion, Laws and Liberties, againſt the Power and Violence of the Common Enemy. This Conſideration, to all true *Engliſhmen*, muſt have a very great Weight, and create the greateſt Horror and Deteſtation, both of the barbarous Deſign, and of all thoſe who had any Concern or Hand in it, to attempt upon the Life, not only of a King, but of ſuch a King.

Gentlemen, when you hear the Evidence that we ſhall offer to you, to prove this Bloody Conſpiracy againſt theſe Priſoners, I doubt not but that there will be enough, and more than enough, to ſatisfy all true-hearted *Engliſh* Subjects, and all that have a Deſire to preſerve our Conſtitution and Government in what Danger we and our Poſterity were, of being utterly ruined and involved in a Common Deſtruction. I ſhall not detain you longer with any Diſcourſe about the Heinouſneſs of this Offence, becauſe every Man's own Thoughts

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Thoughts cannot but ſuggeſt to him how diſmal the Conſequences muſt have been, if ſo fatal a Stroke had been given.

But, Gentlemen, I muſt crave Leave to take up ſo much of your Time as to open how this Bloody Execrable Conſpiracy was firſt framed, and afterwards carried on, by the Priſoners at the Bar, together with others, till it was very near putting in Execution, had not the infinite Mercy of God prevented it, by a timely Diſcovery.

Gentlemen, this Conſpiracy was firſt framed and conſulted upon the laſt Year; there were ſeveral Conſultations and Meetings, at ſeveral Places about the Town, for this Purpoſe; then, and at thoſe Conſultations and Meetings, there were preſent Capt. *Porter*, the Priſoners, and others, of whom you will have an Account from the Witneſſes; and at that Time they had an Expectation of Commiſſions from the late King, to authorize the Deſign: That not coming, they yet reſolved to put it in Execution before the King went away. But, becauſe the *French* Troops were then not in a Readineſs to come over hither, to protect them after the Execution of their bloody Deſign, it was neceſſary for them to fly thither for Shelter; and therefore they endeavoured to procure a Veſſel to be ready to carry them over to *France*. But they could not get a Veſſel Time enough; and then the King's going over into *Flanders* quickly after, prevented the Execution of the Deſign for that Time; and ſo Matters reſted till the King's Return.

About two or three Months ago, Sir *George Barclay*, who is an Officer in the late King *James*'s Guards in *France*, and ſome other Officers, with ſixteen or eighteen Troopers in thoſe Guards, privately came over from *France* to put this Deſign in Execution; and he did acquaint Mr. *Porter* and Mr. *Charnock* with the Deſign, knowing that they had been engaged in the Matter before, and ſo could not but expect that they would readily aſſiſt. This Deſign was treated and conſulted of between them, at ſeveral Times, and in ſeveral Places; at Capt. *Porter*'s, and Mr. *Charnock*'s Lodgings in *Norfolk-Street*; at the *Globe* Tavern in *Hatton-Garden*, the *Nag*'s-*Head* Tavern at St. *James*'s, and ſeveral other Places: Several Conſultations and Meetings were had between the Priſoners at the Bar and others, whom you will hear named at theſe Meetings: Several Ways and Methods were propoſed how it ſhould be beſt effected. It was propoſed by ſome, that it ſhould be done by Ambuſcade; that it ſhould be laid near the King's Houſe at *Richmond*; ſuch a Number on Foot were to lie in the Wood there, ready to attack the King as he came by, and the reſt of the Conſpirators, at the ſame Time, to fall on the Guards. But this Method was not ſo well approved of, as that which was afterwards propoſed and agreed to; that is, there were to be three Parties of them, and the Place was the Lane lying between *Brentford* and *Turnham-Green*, at the End next *Turnham-Green*, which the King uſed to paſs thorough upon his return from *Richmond*. The Order and Method of this Deſign was this, Sir *George Barclay*, with eight or ten more, was to attack the Coach, and by firing into to it, to have killed the King, and all in it; and the reſt were to attack the Guards in two Parties on each Side of the Lane, whereof Mr. *Charnock* and Mr. *Porter* were to command one, and Brigadier *Rookwood* the other. In Order to ſee how feaſible this Deſign might be, the Priſoner *King*, Capt. *Porter*, and *Knightly*, were to go and ſurvey the Place; and the next Day after that Conſultation they went to view the Ground, and did very carefully do it, both on this Side the Water, and on the other Side the Water; and they came back, and met the reſt of the Company at the *Nag's-Head* Tavern, late at Night, to give an Account what they had done, in order to this Enterprize. It was agreed, the Number ſhould be about Forty: Sir *George Barclay* was to make up about Twenty, Mr. *Charnock* was to furniſh Eight, Captain *Porter* Seven; and ſo in other Proportions, in all to make up the Number of Forty; which they thought were enough to effect and accompliſh their Deſign.

In order to make this Matter the more ſure, they did appoint Two to lodge and wait at *Kenſington*, near the Guards; who were to give Notice when the King went abroad: And they had their ſeveral Perſons aſſigned, to whom they ſhould give Notice, who thereupon were to ſend Orders to the ſeveral Parties; one of which was *Chambers*, who was to give Notice to the Priſoner at the Bar Mr. *Charnock*; and there was one *Durance*, who was to give Notice to Sir *George Barclay*; and when ſuch Notice was given, then they were to ſend Orders to the ſeveral Perſons who were concerned in this bloody Buſineſs, to come at the Time appointed, to be diſpoſed of into their ſeveral Poſts.

Gentlemen, in order to the furthering this Deſign, they did likewiſe ſend *Durance* to go and view, and give them an Account of the moſt convenient Inns at *Brentford*, and *Turnham-Green*, and the Places adjacent; which were leaſt liable to Obſervation, where the Men might be the moſt conveniently diſpoſed of, to lie ready againſt the Time when they were to execute this barbarous Aſſaſſination: Accordingly he went, and took an Account of the ſeveral Inns within that Compaſs, and they were to be billetted by Two or Three in an Inn, ſo as not to be obſerved; Sir *George Barclay* and his Party at *Turnham-Green*, and the reſt at *Brentford*.

Gentlemen, after they had thus laid the Deſign, *Saturday* the 15th of *February* was the firſt Time pitched upon for the putting it in Execution, if the King went abroad, as he uſed to do upon *Saturdays*, to *Richmond* to hunt; and if they had Notice from *Durance* and *Chambers* that he was ſo to do, which Notice they had; and every Thing was prepared in order to have perpetrated this villainous Deſign: But it happened that the King went not abroad that Day, of which they had Notice about Noon, from *Chambers* to *Charnock*, and *Charnock* ſent Word ſo to *Porter*'s Lodgings; and then the Order for their getting together was countermanded, and the

Note

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Note by which *Charnock* ſent Word, was ſubſcribed with the Name of *Robinſon*; which you will hear is a Name he goes by, as well as by that of *Charnock*.

The Continuance of the Attorney General's Speech in Charnock's *Trial.*

Thus they were diſappointed at that Time: But they were not diſcouraged from purſuing this inhuman Enterprize; but reſolved to go on, the next Opportunity that ſhould be given. And to omit ſeveral Things that intervened, which the Witneſſes will give you an Account of, on the *Friday* following they met again, to have every Thing ready againſt the next Day, which was *Saturday* the 22d of *February*; when they expected the King would go abroad, as he uſually did on that Day of the Week; and that Meeting was at the *Sun* Tavern in the *Strand*, and there were preſent Captain *Porter*, Sir *William Perkins*, Sir *George Barclay*, and Mr. *Charnock*; and at that Time there was a Diſcourſe amongſt them about the Diſappointment, which they had had the Week before, and ſome of them had a Jealouſy, that a Diſcovery had been made of their Deſign: But then, upon further Conſideration, they concluded, If it had been ſo they ſhould not have met there, but have been taken up: And therefore they concluded, the King's ſtaying at Home that Day was but accidental; and ſo reſolved to put their Conſpiracy in Execution the next Day. While they were there, ſeveral Perſons, for whom Captain *Porter* had undertaken, that is, one *Cranborne*, *Kenrick*, and *Keys* the Priſoner at the Bar, came to *Porter*; theſe were carried into another Room, and commanded all to be ready the next Day, when it was reſolved to put the Aſſaſſination in Execution: And then Captain *Porter* asked *Kenrick* for *Sherborne*, who, it ſeems, had been undertaken for; but it was anſwered, That he asked ſo many Queſtions about the Matter, that he did not think fit to truſt him.

The next Morning they met again, at Captain *Porter*'s Lodgings; and there met (as the Witneſſes will tell you) amongſt others, Mr. *Pendergraſs*, Mr. *Keys*, and Mr. *King*: *King* brought a Meſſage to Captain *Porter* from Sir *George Barclay*, to know the Names of thoſe that were concerned; and upon that Meſſage, Captain *Porter* writ down the Names of his Men, who were for his *Quota*, and ſent the Liſt by *Cranborne* to Mr. *Charnock*, to add his Liſt to it, of the Men he was to have under him: *Cranborne* afterwards came back, and brought the Liſt that Captain *Porter* ſent, with the additional Liſt ſent by Mr. *Charnock*, written with his own Hand, and ſubſcribed *R. C.* and *Cranborne* told them, that *Chambers* had ſent Word, that the King would go out that Morning: At the hearing of which, there was much Joy amongſt them; for they hoped then their wicked Deſign would be put in Execution that Day. There was a Diſcourſe then likewiſe, that *Porter* had a Piece which carried ſix Bullets; and this, it was ordered, ſhould be put into the Hands of *Pendergraſs*, who was to be one of Sir *George Barclay*'s Men, to attack and fire into the King's Coach.

This was upon *Saturday* the 22d of *February*, when they had News that the King was to go abroad, and every Thing was to be put in Execution at his Return from *Richmond*. From Captain *Porter*'s Lodgings they went to the *Blue Poſts* in *Spring-Garden*; but about Twelve o'Clock there came News from *Chambers*, one of the orderly Men at *Kenſington*, that the King did not go abroad that Day: This put them into a very great Confuſion; they then thought ſome Diſcovery muſt needs be made, becauſe of the Diſappointment two *Saturdays* together; and *Keys*, the Priſoner at the Bar, came up and told them, that the Guards were all come back in a Foam, and the King's Coaches were brought back to the *Meuſe:* And this confirmed them in their former Jealouſy, that the Matter was diſcovered; upon which Captain *Porter*, Mr. *Pendergraſs*, and Mr. *Keys*, went together to lie hid ſome Time; but they ſaid, they would ſend *Keys* to Mr. *Charnock*, to let him know where they might be heard of; and if the Matter was not diſcovered, they would ſtill go on, and put it in Execution: But they could not part without drinking ſome traitorous Healths, which the Witneſſes will tell you of, to the Reſtoring of the late King and his Queen, and the Prince of *Wales*; and after all, one of the Company taking an Orange, began a Health to the Squeezing of the Rotten Orange; and in this Manner it was drank by all of them before they parted, though they were under the Apprehenſion at that Time of being diſcovered already.

This is the Beginning and Progreſs of the ſeveral Conſultations that were had, for the carrying on this execrable traitorous Conſpiracy. I have opened it ſhortly to you; but you will hear it much fuller, in it's ſeveral Parts, by the Witneſſes. By what I have opened, you cannot but obſerve, that it was very near coming to be executed, if there had not been a Diſcovery of it Time enough, through the Providence of Almighty God, to prevent it. They had agreed, after the intended Aſſaſſination, to keep together till they came near the Town, and then they were to lie hid till the *French* Troops landed; which they were aſſured of, were ready upon the leaſt Intimation of the Succeſs of this Conſpiracy.

Gentlemen, every Body may gueſs at the diſmal Conſequences that would have followed, had this bloody Deſign taken Effect; and I am ſure, as we and our Poſterity could not have expected any thing leſs than the perpetual Yoke and Burden of Slavery and Popery, if it had pleaſed God to permit this Conſpiracy to take Effect; ſo I hope we ſhall always remember the merciful Hand of Providence, that has detected and diſappointed it.

Gentlemen, I ſhall not detain you any longer; I have opened to you part of that which will more fully be made out by the Witneſſes; only I would obſerve, that the Providence of God has not only made a Diſcovery to prevent the Execution of this abominable Villainy; but has brought this Conſpiracy ſo far to Light, by ſuch unqueſtionable Teſtimony, that no Man can doubt of the Reality of it; which, I hope, will raiſe in every honeſt Man's Mind an Abhorrence and Deteſtation of thoſe Principles upon which ſo villainous and

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and barbarous a Deſign was founded; and I think I may ſay, that after the Evidence you will hear this Day, no one will pretend any Doubt of the Truth thereof; but either ſuch as are ſorry for the Diſcovery, or ſuch as knew too much of the Conſpiracy before. I ſhall trouble you no further, but call our Witneſſes, who will give you a full and clear Account of this Conſpiracy.

Porter's Evidence.

The King's Witneſſes being called, Captain *Porter* was ſworn, and teſtified, That Mr. *Charnock* and he lodged in the ſame Houſe, and that Sir *William Perkins*, who lodged there alſo when he came to Town, informed them that ſome Friends were come from *France*, and ſomething was doing that would be for the King's Service: And a little after Mr. *Charnock* acquainted this Witneſs, that Sir *George Barclay*, and thoſe that came from *France*, had brought a Commiſſion to levy War upon the Perſon of King *William*, and asked him (the Witneſs), how many he could bring to join them, if the King landed. That afterwards Sir *George Barclay* and Major *Holmes* came and talked with him and Mr. *Charnock*, at their Lodgings, of the Deſign, and they had ſeveral Meetings after this, particularly at the *Globe* in *Hatton-Garden*, the *Nag's-Head* in St. *James's-Street*, and the *Sun*-Tavern in the Strand; and in all theſe Places they conſulted which was the beſt Way to aſſaſſinate the Prince of *Orange* (his Majeſty). Sir *George Barclay* ſaid, he had as much Money as would furniſh out about Forty Horſe; Captain *Charnock* ſaid, he would bring Six or Seven, Sir *William Perkins* ſaid, he would lend Five Horſes; he (the Witneſs) ſaid, he would bring Seven Men and Horſe: That ſome propoſed to ſet upon the King as he came from *Richmond*; others at *Kew*, or in *Richmond*-Park; but Mr. *Knightley*, Mr. *King*, and the Witneſs going to view the Ground, Sir *George Barclay*, on their Report, was of Opinion, that the Lane leading from *Brentford* to *Turnham-Green* was the propereſt Place; in which the reſt concurred: And it was agreed to divide themſelves into three Parties, one to attack the Coach, and the other two the Guards; and they were to put their Deſign in Execution on *Saturday* the 15th of *February* laſt; the King uſually going to *Richmond* on *Saturdays* to hunt: And to prevent Suſpicion, they were to lie diſperſed in ſeveral Inns about *Brentford* the Night before; and when the Matter was over, Sir *George Barclay* directed them to get to *London* and lie concealed, aſſuring them, there would ſoon come over a ſufficient Number to their Aſſiſtance from abroad, and four or five Thouſand *French* would make Diverſion at the ſame Time in *Scotland*.

That they were preparing to put the Deſign in Execution on *Saturday* the 15th of *February*; but Mr. *Charnock* wrote the Witneſs a Note, that the King did not go out that Day.

That on the *Friday* following, the Conſpirators met at the *Sun*-Tavern in the *Strand*, and diſcourſed of their Diſappointment, and ſeveral were afraid the Deſign was diſcovered: However, it was reſolved to endeavour to execute it the next Day, being *Saturday* the 22d of *February*; when Mr. *Charnock* deſired a Liſt of his (the Witneſs's) Men, and ſent him a Liſt of his own: And they were preparing all Things to put the Deſign in Execution; when they received News that the King did not go out that Day neither: Whereupon they agreed to diſperſe themſelves, and on *Thurſday* he (the Witneſs) and Mr. *Pendergraſs* were apprehended.

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It being demanded, which of the Priſoners were preſent at their Conſultations? *Porter* anſwered, Mr. *Charnock* and Mr. *King* were at all of them; that *Keys* was his Servant a Year and half, and preſent at moſt of their Conſultations, and hired Horſes to be employed in the Buſineſs, and agreed to be an Actor in it. Mr. *Porter* teſtified further, That the Winter before this, there were ſeveral Meetings and Conſultations between Captain *Charnock*, Sir *William Perkins*, and himſelf, of the like Nature; and they were of Opinion, that the quieteſt Way of Reſtoring King *James* was, to knock the Prince of *Orange* on the Head; and the Reaſon they did not attempt it then, was, becauſe they wanted a Commiſſion from *France*, which they thought was neceſſary to authorize them to do it.

Mr. *De la Rue* being ſworn, teſtified, That this Conſpiracy had been carrying on ſeveral Years; and that the laſt Year there were ſeveral Conferences about it, between Sir *William Perkins*, Capt. *Porter*, Capt. *Charnock*, and others: That *Charnock* told him they had ſent to King *James* for a Commiſſion to authorize them to carry the Prince of *Orange* to *France*, if they could take him alive; and if they could not, they agreed to excuſe themſelves, by pretending he was killed by a random Shot: That the Commiſſion being delayed a long Time, they once agreed to do it without a Commiſſion; and a few Days before the King went to *Flanders* laſt Year, he was told, all was ready; only they wanted a Ship to carry off the Prince of *Orange*, which occaſioned the deferring the Deſign till the preſent Winter.

That in *November* or *December* laſt, *King* the Priſoner told this Witneſs, that a Major General would come from *France*, and that there was a Man of Quality in Town would diſburſe two or three Thouſand Pounds, to buy Horſes (as he underſtood), if King *James* would give Orders for it. That *King* alſo told him, on the 9th of *February*, there was the fineſt Place to put their Deſign in Execution that was poſſible, within a Quarter of a Mile of the King's Houſe at *Richmond*: But afterwards it was reſolved to aſſaſſinate his Majeſty in the Lane coming from *Brentford* to *Turnham-Green*; becauſe Sir *George Barclay* was not ſure of Horſe enough to carry him off: That Sir *George* was to command the Eight Perſons who were to aſſault the King, and thoſe that were in the Coach; *Charnock* was to attack the Guards in the Rear, and *Rookwood*, that came with a Party from *France*, and Capt. *Porter* were to attack the Guards on each Flank: That after the firſt Diſappointment (*viz.*) on the 18th of *February*, he met Mr. *Charnock*, who obſerved, that

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People who were forward and ſanguine, were now grown cold, and believed the King had Notice of their Deſign; however, he might depend upon it, the main Buſineſs (the Invaſion) would go on. That on *Saturday* Morning (the 22d) they were aſſembled at Capt. *Porter*'s Lodgings in *Maiden-Lane*, and preparing to make another Attempt: And Captain *Porter* told this Witneſs, that Capt. *Pendergraſs* was to be one of the Eight under Sir *George Barclay*, that were to aſſaſſinate the King; and he was to lend him a Gun that would carry ſix or ſeven Bullets: Whereupon *King* ſaid to Capt. *Pendergraſs*, he hoped he would not be afraid of breaking the Glaſs Windows: That Capt. *Porter* at the ſame Time ſent a Liſt of his Men to Capt. *Charnock*, and the Meſſenger brought back a Liſt of Mr. *Charnock*'s Men, under his Hand, ſubſcribed *R. C.* And while they were continuing their Preparations, Word was brought that the King did not go abroad that Day; and that the Guards who were ſent to *Richmond*, were returned back all in a Foam; and the King's Court was returned from *Kenſington* to the *Meuſe*-Gate: Whereupon they all looked very blank; and *Porter* asked *Pendergraſs* to go out of Town with him, and ſent *Keys* to give the reſt of the Conſpirators an Account, there was no Occaſion for them; and ſo they diſperſed: But, before the Company parted, there were ſeveral Healths drunk, as To the late King's Reſtoration; A Health to the Prince of *Wales*, the late Queen, and the *French* King; and Capt. *Porter*, taking an Orange in his Hand, and ſqueezing it, began a Health *to the Squeezing of the Rotten Orange*, and ſaid, though they were diſappointed one Day, he hoped to have another; and that *Keys* dined with them, and drank theſe Healths with the reſt of the Company.

Pendergraſs's *Evidence.*

Captain *Pendergraſs* was then ſworn, and confirmed the Teſtimony of *Porter* and *De la Rue*; adding, that upon their Diſappointment, he went out of Town to *Epſom* with Capt. *Porter*, and from thence to *Leatherhead* where *Keys* and they were taken and brought back to *London*.

Bertham's *Evidence.*

Bertham depoſed, That Mr. *Charnock* propoſed to him to be one of the Party to cut off the King, as the readieſt Way to facilitate an Invaſion that was intended from *France*, to reſtore King *James*.-----That on the 22d of *February*, after their Diſappointment, he met Mr. *Charnock* at *Lincoln*'s-*Inn*-Gate, who told him, Warrants were out againſt them; and they had as good go out to *Kenſington*, and do the Work at once, take of the Spark, and then they ſhould be quiet, and have the King peaceably here.

Boyſe's *Evidence.*

Mr. *Boyſe* depoſed, That he came from *France* the beginning of *June* laſt, and that on the 14th of *February*, going to viſit *King* the Priſoner, he told him there was a great Undertaking in hand; and asked him, if he would make one, and he would provide him a Horſe, and give him (the Witneſs) Twenty Shillings to buy Boots; but he never told him the Deſign was to take off the King, only ordered him to be ready, and not to be out of the Way; and ſaid that Sir *George Barclay* was to command the Party; and there were about Forty, or Five and Forty, concerned in the Deſign.

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Charnock's *Evidence.*

Capt. *Charnock*, in his Defence, ſaid, He ſuppoſed the Evidence of what was done laſt Year was nothing to the Purpoſe, there being nothing mentioned, in the Indictment, of the laſt Year.

But the Court obſerved that it was ſaid in the Indictment, *Divers Days and Times, as well before as after*; and therefore the Indictment comprehended what was done laſt Year as well as this: Nor were the Witneſſes, or the King's Counſel, tied up either to the particular Time or Place mentioned in the Indictment, ſo it was within the County, and before the Indictment preferred. All that was to be regarded was, that no Evidence was admitted of any other Species of Treaſon, than was contained in the Indictment.

Objections to Porter's *Evidence.*

Then Mr. *Charnock* objected, that *Porter* was not a legal Witneſs, having made himſelf a Criminal, and forfeited his Life by his own Confeſſion; and now hoped, by ſwearing againſt others, and taking away their Lives, to ſave his own, which muſt affect the Credibility of his Teſtimony. If he was allowed to be a legal Witneſs, he could not be a good one.

The Court anſwered, That not only in Treaſon, but in Robbery and Felony, the Parties were ever allowed to be good Witneſſes againſt their Accomplices.

Mr. *Charnock* continued his Defence, and obſerved, as to Capt. *Porter*'s Evidence, that he acknowledged, he (the Priſoner) had never ſeen the Commiſſion from King *James*; and that, though he teſtified they were to command a Party, he did not ſay which Men were to be of it; and it was not to be ſuppoſed, when the Deſign was ſo near being put in Execution, it ſhould not be known who were to engage in it: And though *Porter* ſaid he ſent him a Liſt of Names written with his own Hand, he did not ſay he ſaw him write it; and Similitude of Hands was never thought to be good Proof in Criminal Caſes: Nor was there any Proof of their providing Arms or Horſes, or any other Overt Act of this bloody Aſſaſſination, which he confeſſed he contrived and carried on himſelf.

That the Evidence of Mr. *De la Rue* was but Hear-ſay; and even that very improbable; particularly the Scheme of carrying the Prince of *Orange* alive into *France*. How was it poſſible they ſhould carry him off to Sea; They muſt have been Madmen to have entertained ſuch a Chimæra. That Captain *Porter* and *De la Rue* contradicted one another alſo in their Evidence. Captain *Porter* ſaid, they were to attack the Guards together; and the other ſaid, that he (the Priſoner) was to attack the King, with Sir *George Barclay*. That *De la Rue* did not ſay he talked to him about killing the King, but in general of the Affair; and, indeed, that it appeared *De la Rue* was ſet to trepan him, which ſhews he bore him Malice; and cited Sir *Robert Atkyns*, who held, That he that acknowledged himſelf to be Partaker of the Crime, muſt be a bad Man, eſpecially if it appeared the Witneſs had

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had trepaned the Priſoner. *Shall ſuch a one* (ſays Sir *Robert*) *be a credible Witneſs, and believed againſt the Priſoner? God forbid!*

That the Evidence of *Pendergraſs* againſt him conſiſted of Hear-ſay alſo. And as to *Bertham*'s Evidence, it was very improbable that this Matter, which was ſo great a Secret he ſhould communicate to a private Trooper: Nor could any body tell what to make of thoſe Words, *Take off the Spark.* He did not ſay he talked to him of killing the King, but only that he might ride out and take the Air; and there he ſhould meet with his Acquaintance.

He hoped, therefore, the Court would be of Opinion, that the Evidence produced againſt him was frivolous and weak; and that, if it were all true, it was only Diſcourſe. They were forced to ſupply in Words what was wanting in Fact. He did inſiſt upon it, there was not plain and manifeſt Proof, but only Preſumptions, and deſired the Judges would tell the Jury plainly, what was legal Evidence and what was not; and then what was ſufficient Proof of any one Overt Act or Species of Treaſon: That they would not leave it to the Apprehenſion of the Jury, but inform them truly, what was legal Evidence, and what of that Sort had been given at this Trial. He added, That this was a ſtrange Sort of Conſpiracy: Forty Men only to commit this Fact on the King in his Coach, and to attack the Guards. Could it be ſuppoſed that any Man, in his Senſes, would attempt ſuch a Thing, without any Regard to his own Security? The Guards were at leaſt treble the Number, and much better appointed and provided: And that Forty ſhould attack treble their Number, in divided Bodies, were to mix Fancy and Madneſs with Reſolution; eſpecially when they had no Caſtle or Fortreſs to fly to, and none to ſupport and aſſiſt them: They ought to be confined to *Bedlam* rather than *Newgate*, if they were capable of ſuch Raſhneſs and Folly.

King's Defence.

Then Mr. *King* entered upon his Defence, and demanded of Capt. *Porter*, If there was any thing mentioned of killing the King, when they rode out to view the Ground? To which *Porter* anſwered, That the Day before they went to view the Ground, they dined together at the *Nag's-Head*, and *King* asked, if he (the Witneſs) was to meet *Knightly*, and view the Ground, in order to ſettling the Deſign which was then talked of and conſulted about: And Capt. *King* deſired to go with them; and they lay at *Knightsbridge:* And while they were viewing the Ground, they diſcourſed of the Situation of the Place; and *King* did not approve of the Place on this Side the Water, but liked the Ambuſcade better, which was to have been on the other Side the Water.

King replied, he did, indeed, go abroad with Capt. *Porter* and Mr. *Knightly*, but it was meerly to take the Air; and obſerved, as to Mr. *De la Rue*'s Teſtimony, that he did not ſay he ever told him of a Deſign to deſtroy the King: And Mr. *Pendergraſs* ſaid, they diſcourſed of the Matter, but did not explain what that Matter was; nor did *Boyſe* charge him with a Deſign of killing the King: And as to what was Treaſon, and what was Evidence of it, he left it to the Court to inform the Jury.

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Keys's Defence.

Keys the Trumpeter being ordered to enter upon his Defence, ſaid he was Servant to Mr. *Porter*, who was now become a Witneſs againſt him; and that he did nothing but by his Orders and Perſuaſion.

The Chief Juſtice told him, the Commands of his Maſter could not excuſe his having committed High Treaſon: It was proved he had bought Horſes, and was acquainted with the Deſign, and engaged in it.

Keys replied, he knew nothing of it; his Maſter was pleaſed to jeſt with him ſome Times, and he might ſay Things he did not regard.

The Chief Juſtice's Directions to the Jury.

Then the Chief Juſtice directed the Jury, and ſaid, It was very true, as Mr. *Charnock* had obſerved, that bare Words were not Treaſon in ſome Caſes: Looſe Words, ſpoken without any relation to any Act or Deſign, were not Treaſon, or an Overt Act of it; but Arguments and Words of Perſuaſion, to engage another in ſuch a Deſign or Reſolution, and directing or propoſing Means to effect it, were Overt Acts of High-Treaſon: It was the Imagination, the compaſſing, and deſigning the Death of the King that was the Treaſon; there was no Way of diſcovering thoſe Compaſſings and Imaginations, but by ſome External Act that manifeſted ſuch Intention or Purpoſe; and any Thing that was a Manifeſtation of ſuch a Deſign was an Overt Act: And here had been proved ſeveral Meetings and Conſultations, and Propoſals at thoſe Meetings, about the Ways and Methods for bringing about the Deſign of Aſſaſſination. And it was never yet doubted, but to meet and conſult to kill the King, was an Overt Act of High-Treaſon; and Mr. *Charnock*'s endeavouring to engage *Bertham* in the Enterprize was another Overt Act.

As to that Objection to the Credibility of the Witneſſes, That they had acknowledged themſelves involved in the ſame Crimes, they were however legal Witneſſes; but their Credit in this, as in all other Caſes, was left to the Jury: That ſuch Evidence had been always allowed; and unleſs the Accomplices were admitted to be Witneſſes, Governments could never be ſecure againſt ſuch villainous Enterprizes.

All three convicted,

The Jury, withdrawing for half an Hour to conſider of the Evidence, brought in all the three Priſoners GUILTY; and then the Court adjourned.

In the Afternoon the Priſoners were brought into Court again, and it being demanded of them ſeverally, What they could ſay, why Judgment ſhould not be pronounced againſt them? Mr. *Charnock* again teſtified, They ought to have had Counſel and a Copy of the Indictment, *&c.* according to the late Act: He alſo made ſome trivial Objections to the *Latin* of the Indictment, which being overruled, the uſual Sentence in Caſes of High-Treaſon was pronounced, and they were all executed at *Tyburn*, on *Wedneſday* the 18th of

condemned,

and Executed.

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of *March* 1695-6, when they left the following Papers with the Sheriffs.

Mr. *Charnock*'s Paper.

The Papers left with the Sheriffs.

THAT I might avoid Diſtractions, and be compoſed as much as is poſſible at the Time of my Execution, I thought it much more proper to communicate this to the Sheriffs, than to give my ſelf the Uneaſineſs of ſpeaking, leaving it to them to publiſh (if they ſhould think convenient) for the Satisfaction of the World; and in what I have to ſay, I have taken as much Care as I could to be ſhort, that I might not loſe Time in my greateſt Concern.

As concerning an Invaſion intended by King *James* upon *England*, there was certain Intelligence of it from abroad, I preſume every Body was ſatisfied; and to the facilitating of which, I own that my ſelf and ſome others did agree upon the Undertaking to attack the Prince of *Orange* and his Guards, for which I am now to ſuffer: But I think my ſelf obliged, by all the Ties imaginable, both of Conſcience and Honour, to declare, that as for any Order or Commiſſion of King *James*'s, for aſſaſſinating the Prince of *Orange*, I never ſaw nor knew of any; but have had frequent Aſſurances of his having rejected ſuch Propoſals when they have been offered.

I confeſs, I did hear that there was a Commiſſion arrived for levying War; and which was natural to believe, if the King was in ſuch a Readineſs to come over as was reported; but if there was any ſuch Authority as that, I declare I never ſaw it.

As to what regards the Body of the *Roman Catholicks*, I muſt do them this Juſtice, and which I dare be poſitive in, that they had no Manner of Knowledge of this Deſign: Nor do I believe it was communicated to any other Party of ſuch as are reputed the King's Friends; but carried on merely by a ſmall Number, without the Advice, Conſent, or Privity of any Parties whatſoever.

I ask Forgiveneſs of all the World for what Offences or Injuries I have done to them; and I am (I bleſs Almighty God) in perfect Charity with all Mankind.

Robert Charnock.

Mr. *King*'s Paper.

I AM now within a few Moments of Eternity, brought to this Place by the juſt Hand of God, in Puniſhment of all my Crimes; but particularly of that of which I have been lately arraigned, and for which I ſtand here condemned; but I hope that Goodneſs of God, which has given me a Senſe of my Wickedneſs, will accept my Repentance, and ſhew Mercy on me; which I hope to obtain through the Paſſion and Merits of my Redeemer, upon whom I entirely caſt my ſelf. 1695. 8 W. III.

And that I may find his Mercy, I think my ſelf obliged to do Juſtice to my Neighbour, that ſo none may ſuffer wrongfully on my Account: And therefore, as I am ſoon to anſwer the Truth of what I ſay before the Tribunal of God,

Firſt, I declare, That I never ſaw any Order or Commiſſion for King *James*'s promoting the Aſſaſſination for which I am condemned, neither do I know of any ſuch Order or Commiſſion.

Secondly, That this Deſign was not undertaken with any general Knowledge or Approbation of any Body of Men, either Catholick or Proteſtant.

Laſtly, That I did not engage in it on Preſumption of any King-killing Principles that could juſtify ſuch an Undertaking; but was drawn into it by my own Raſhneſs and Paſſion; for which, and all other Sins, I heartily beſeech God to forgive me.

And I hope that ſuch who think the Misfortune of their Impriſonment or Trouble is derived from my having been engaged in this Enterprize; or ſuch to whom it has any Ways given Scandal, that they will admit me to their Pardon, as I freely and heartily forgive all Mankind. In this Diſpoſition of a ſincere Repentance, and true Charity, I commend my Soul into the Hands of God, and hope to find Mercy from him: And for this I beg all your Prayers.

Edward King.

Mr. *Keys*'s Paper.

I AM going to appear before the living God: I truſt in his Mercy that he will forgive all my Sins committed to this laſt Moment of my Life. God is juſt in all his Judgments, and I accept of this Death as the Puniſhment of my Iniquities. I forgive all my Enemies, and hope through a hearty Repentance, and the Merits of my Saviour, to obtain Mercy.

Have Mercy on me, O Father of Mercy, and through thy only Son forgive me all my Sins! *Thomas Keys.*

The Trial of Sir JOHN FREIND, Knight, for *High-Treaſon*, at the *Old-Baily*, *London*, on the 23d of *March* 1695-6. 8 *W.* III.

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Sir John Freind's *Trial.*

The Indictment.

THE Indictment charges the ſaid Sir *John Freind* with High-Treaſon, in compaſſing and imagining the Death of the King, and adhering to his Enemies: And that the ſaid Sir *John Freind*, in Proſecution of his ſaid Treaſons, did, on the firſt Day of *July* in the Seventh Year of his preſent Majeſty, and divers other Days and Times, during the preſent War with *France*, conſult with *Robert Charnock*, and divers other Traitors, how to procure Forces from the *French* King to invade the Kingdom, and to levy Forces within the Kingdom to join the Invaders: And that he did ſend the ſaid *Robert Charnock* to *France*, to propoſe to the late King *James* the obtaining the ſaid Forces of the

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the *French* King: And that the ſaid Sir *John Freind* did traitorouſly accept a Commiſſion from the ſaid King *James*, to be a Colonel of Horſe of the Forces intended to be raiſed within this Kingdom: And that the ſaid Sir *John* actually raiſed, liſted, and kept in Pay, divers Officers and Soldiers, in order to join the *French* King's Forces on the intended Invaſion; and bought up, and provided Horſes and Arms for them; againſt the Duty of his Allegiance, *&c.*

The King's Evidence being called, and Captain *George Porter* ſworn, Sir *John Freind* demanded, if he was a Proteſtant or a Papiſt? But the Court told him, the Witneſs was not bound to anſwer that Queſtion; becauſe it might ſubject him to a Penalty.

Porter's *Evidence.*

Then Captain *Porter* depoſed, That about the latter End of *May*, or the Beginning of *June*, then laſt paſſed, the Conſpirators had two Meetings; the firſt at the *King's-Head* in *Leaden-Hall-ſtreet*, and the other at Mrs. *Mountjoy*'s in St. *James*'s-*ſtreet*: At the firſt Meeting were preſent my Lord *Montgomery*, my Lord *Aylesbury*, Sir *John Freind*, Sir *William Perkins*, Sir *John Fenwick*, Mr. *Cook*, Captain *Charnock*, and himſelf; and Mr. *Goodman* came in after Dinner: At theſe Meetings they conſulted and agreed to ſend *Charnock* to *France* to King *James*, to deſire him to borrow of the *French* King Ten Thouſand Men, to make a Deſcent in *England*; and that *Charnock* ſaid, he did not care to go on a fooliſh Errand; and therefore deſired to know, what King *James* might expect from them. Whereupon they ſaid, he might aſſure the King whenever they had Notice of his Landing, they would join him with a Body of Two Thouſand Horſe, and every one of them obliged himſelf to bring his *Quota*.

That he ſaw *Charnock* after he came back from *France*, and he told him (this Witneſs) That King *James* thanked them for their Kindneſs; but the *French* King could not ſpare ſo many Men that Year: That he (the Witneſs) was at another Meeting at the *Nag's-head* in St. *James*'s-*ſtreet*, with Sir *George Barclay*, Sir *John Freind*, Sir *William Perkins*, Mr. *Ferguſon*, and Captain *Charnock*; and *Harriſon* a Popiſh Prieſt came in after Dinner, and ſome of them whiſpered together; whereupon Sir *John Freind* ſaid, Is there any Thing behind the Curtain? If there be, I am not fairly dealt withal; I will proceed no further.

Blair's *Evidence.*

Captain *Brice Blair* depoſed, That about two Years before, Sir *John Freind* ſhewed him a Commiſſion from the late King *James*, conſtituting him a Colonel of Horſe; and that Sir *John* promiſed him (the Witneſs), That he ſhould be his Lieutenant Colonel; and he ſaw ſeveral Letters in Sir *John*'s Hands, that came from my Lord *Melford*, and Secretary *Caroll*, who were with King *James*; and that Sir *John* appointed ſeveral other Officers of his Regiment: That he (the Witneſs) liſted ſeveral Men thereupon, and received ſeveral Sums of Money of Sir *John Freind*, or of Mr. *Piggott* by his Order, to ſpend on them; the laſt five Pounds was paid by *Piggott*, in the Preſence of Sir *John Freind*, at *Jonathan*'s Coffee-Houſe; for *Piggott* had received Money of King *James* to repay Sir *John Freind* what he had advanced, for facilitating Colonel *Parker*'s Eſcape out of the *Tower*; and Sir *John Freind* told this Witneſs he had advanced an Hundred Pounds for that Service.

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That he (the Witneſs) telling Sir *John* of the Conſpiracy againſt the Prince of *Orange*'s Life, he anſwered, he had heard of it; and was afraid it would ruin the King's Affairs: That at another Time Sir *John* ſaid, he would do any Thing till the *Thoulon* Fleet had joined the *Breſt* Fleet; and that he adviſed the Witneſs to ſculk about Town, and ſaid he would keep himſelf private, leſt they ſhould be taken up at that Time.

Then *Blair* produced a Letter, wherein Sir *John* deſired him to meet him at *Jonathan*'s Coffee-Houſe; and depoſed, that when he met Sir *John*, in Purſuance of that Letter, he received an Order for the 20 *l.* mentioned in it.

The Court demanding, what he received the Money for? *Blair* anſwered, It was to drink with the Men that were to ſerve in his Regiment, to cheriſh them, and keep them together.

Here Sir *John Freind* ſaid, That *Blair* was recommended to him for a very honeſt Man, and came to him ſeveral Times, telling him his Neceſſities were very great; ſaid he was ready to ſtarve, and had a great Charge, and begged for God's Sake he would beſtow ſomething on him, to relieve his Neceſſities: And Sir *John* acknowledged he had given him Money ſeveral Times; but never for any other Uſe but as Charity, and deſired he would declare the Truth, if he had not ſeveral Times written theſe Words to him, *I am ready to ſtarve, and beg you will relieve my Neceſſities.*

Blair ſaid, he did acknowledge Sir *John* had given him Charity; but he had ſpent ſo much Money in his Buſineſs, as reduced him to the Want of it; it had coſt him many a Pound more than he had of him: Adding, that he had brought in ſeveral Officers to Sir *John*, particularly Captain *Fiſher*, Captain *Symons*, Captain *Ridley*, and Mr. *Richardſon*, and he promiſed *Fiſher* in his Hearing, he ſhould be his eldeſt Captain, upon Condition he would bring in a Troop.

Sir John Freind's *Defence.*

Then Sir *John Freind* entered upon his Defence, and ſaid, he owned he was at the Meeting at the *King's-Head* in *Leaden-Hall-ſtreet*; but there was nothing ſpoken of the Government, or of raiſing Men; that the Witneſſes were Papiſts, and not legal Witneſſes againſt Proteſtants; and called Mr. *Courtney* as a Witneſs for him, who teſtified, That he was a Priſoner in the *Gate-houſe* with Captain *Blair*, who declared before him, and ſeveral more, that he knew nothing of a Plot; and that reading the *Flying-Poſt* to him, wherein it was ſaid, He was to be Lieutenant Colonel to Sir *John Freind*, and had received a great deal of Subſiſtence Money for the Regiment; *Blair* ſaid, he knew nothing of any Regiment or Commiſſion: And that at another Time he appeared in an Agony, and under

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great Remorse of Conscience; because he was to be an Evidence against Sir *John Freind*; and his Wife said, he would not do it, but to save his own Life. Other Witnesses testified, that both *Porter* and *Blair* were reputed *Roman* Catholicks: And Witnesses appeared to testify, That Sir *John Freind* was a Protestant, and had a fair Character; and particularly Mr. *Lupton*, Curate of *Hackney*, who said, he officiated as Chaplain in Sir *John*'s House; and that after the Revolution he used to pray for King *William*; and he had often heard him say, Though he could not comply with the present Government, he would live peaceably under it, and never be concerned in a Plot against it. Mr. *Hoadly* (Father of the present Bishop of *Winchester*) also deposed, That Sir *John* was a good Protestant, and used to express himself with great Detestation against King-killing, and Assassinating Crowned Heads.

Sir *John* then insisted, That a Consultation to levy War was not Treason; and that the being at a Treasonable Consult was but Misprision of Treason; and thereupon the Statute of 25 *Edw.* III. was read; but these Points were over-ruled against him; and the Lord Chief Justice *Holt*, in summing up the Evidence, observed, That this Statute contained divers Species, as, 1. The Compassing the Death of the King; and, 2. Levying War: But a bare Conspiracy, or Design to levy War, was not within this Law against Treason: But *if the Design or Conspiracy be either to kill the King, or to depose or imprison him, or to put any Force or Restraint upon him; and the Way proposed to effect any of these is by levying War; there the Consultation and Conspiracy to levy War is High Treason, though no War be actually levied:* For such Consultations and Conspiracies are Overt Acts, proving the designing or compassing the Death of the King, which was the first Treason specified in the Statute of 23 *Edw.* III. That where a Man designed the Death, Deposition or Destruction, of the King, and, pursuant to that Design, agreed and consulted to levy War; that this should not be High Treason unless a War was actually levied: *This was a very strange Doctrine:* A War may be levied, indeed, without any Design upon the King's Person; which, if actually levied, however, is High Treason; but *a bare Design* to levy *such a* War was not Treason: As for Example, the Rising in Arms to pull down all Enclosures, to expel Strangers, or to pull down Bawdy-houses, without Authority, was levying War and Treason: But the bare purposing and designing to Rise in Arms for such Purposes, was not Treason. If Persons assembled themselves also, and acted with Force in Opposition to some particular Law which they thought inconvenient, and hoped thereby to get it repealed, this was levying War and Treason: But the purposing and designing it was not so. *When Men endeavoured, in great Numbers, with Force, to procure some Reformation in the Church or State, without pursuing the Methods of Law, That was a levying War, and Treason within the Statute; but the Purposing and Designing it was not so.* But if there was a Purpose to destroy the King, to depose him from his Throne, to restrain him (in the Exercise of his Power), or to put any Force upon him, and it was proposed or designed to effect any of these by War; such a Conspiracy or Consultation to levy War, for bringing any such Designs to pass, was an Overt Act of High Treason.

The Chief Justice sums up the Evidence.

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Then the Jury withdrew, and returning half an Hour afterwards, brought in the Prisoner GUILTY.

Sir John Freind convicted.

See the Sentence and Execution after the next Trial.

The Trial of Sir WILLIAM PERKINS, Knt. for *High-Treason*, at the *Old-Baily*, *London*, on the 24th of *March* 1695. 8 *W.* III.

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Sir William Perkins's *Trial.*

The Prisoner's Plate seiz'd.

SIR *William*, at his Arraignment, complained that a Chest of Plate, that was sent him by his Wife, was seized by the Sheriff: To which Mr. Sheriff *Buckingham* answered, it was lodged at Mr. Secretary *Trumball*'s Office; and when they took it from thence they gave a Receipt to return it thither; But the Chief Justice said, He must have the Plate for his Subsistence in Prison; and some Care should be taken about it.

The Indictment.

The Indictment charges the said Sir *William Perkins* with compassing the Death of the King, and adhering to the King's Enemies; and that in Prosecution of his said Treasons, he did, on the 1st Day of *July*, in the 7th Year of the King, in the Parish of St. *Paul Covent-Garden*, in the County of *Middlesex*, together with *Robert Charnock*, and other false Traitors, meet and consult how to procure Forces from the *French* King, and to raise a Rebellion in his Kingdom, and join the said Forces at their Landing: And that they did consult and agree to send the said *Robert Charnock* into *France*, to the late King *James*, to desire him to procure Forces of the said *French* King, for the said intended Invasion: And that the said Sir *William Perkins*, to facilitate the said Invasion, did afterwards, on the 10th of *February*, in the Year aforesaid, and in the Parish and County aforesaid, consult and agree with the said *Robert Charnock*, and other Traitors, to assassinate his present Majesty; and that Forty Horsemen, with Arms, *&c.* should form an Ambuscade for that Purpose: And that the said Sir *William* did undertake, for his Part, to provide five of the Horses to be employed in that Enterprize; and did buy Horses and Arms, and list Men, in order to raise a Rebellion, and join the said *French* King's Forces, as soon as the said Assassination and Murder of the King should be committed; against the Duty of his Allegiance, *&c.*

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Sir

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Desires the Benefit of the late Act, and his Trial might be put off.

Sir *William* having pleaded Not Guilty, desired he might have Counsel, according to the late Act; for that Act said, *This was just and reasonable:* And what would be just and reasonable To-morrow, was so To-day; and if convenient Notice had been given him of his Trial, he should have had the Benefit of the Act: That no one could ever want the Advantage of that Statute for the future, or suffer by such Want, but himself; which was a particular Hardship on him: And desired that the Trial might be put off but one Day, because some of his Witnesses were absent, whose Names he would give in.

Both denied.

But the Chief Justice would give no further Time, and ordered the Jury to be sworn, of whom the Prisoner challenged two, because they were the King's Servants; but was told by the Chief Justice, This was no good Cause of Challenge. He afterwards challenged 30 more of the Pannel peremptorily.

Porter's Evidence.

Then the King's Witnesses were called; and first Captain *Porter* was sworn, who testified, That Sir *William Perkins* dined with *Charnock*, and the rest of the Conspirators, mentioned in the former Trial, at the *King's-Head* in *Leaden-hall-street*; and afterwards met them at Mrs. *Mountjoy*'s in St. *James*'s-*street*; and that it was resolved at both Places to send Mr. *Charnock* to *France*, to concert Measures with King *James* and the *French* King, for sending over Ten Thousand Men, and to assure them, the Conspirators would join them with Two Thousand Horse on their landing.

That he met Mr. *Charnock* after his Return, who told him, the *French* King could not spare so many Men at that Time; and that he had acquainted the Lord *Aylesbury*, and Sir *William Perkins*, with the Answer he brought.

Capt. *Porter* testified further, That he was at several Consultations with Sir *George Barclay*, Mr. *Charnock*, Sir *William Perkins*, and other Conspirators, at the *Globe* in *Hatton-Garden*, at the *Nag's-Head* in *Covent-Garden*, and at the *Sun* in the *Strand*, where it was debated, how they should assassinate the King, as he came from *Richmond* after Hunting. That Sir *George Barclay* said, He had received 800 *l.* from King *James*'s Secretary, to buy Horses for the Enterprize; and they agreed that Forty Horse should be the Number, of which Sir *George Barclay* was to furnish Twenty, with Men, Arms, and all Accoutrements. That he (the Witness) promised to bring seven or eight Horses: Sir *William Perkins* engaged to bring five, whereof three were to be mounted with his own Men, and the other two by Men the Witness was to bring: That he *(Porter)* asked Sir *William Perkins* if he had seen the Commission, and he said he had; and that, because King *James* would not trust any of his Ministers, it was written with his own Hand; and the Purport of it was, For levying War on the Person of the Prince of *Orange* (the King.)

That the Evening after they had viewed the Ground, the Conspirators met at the *Nag's-Head*, among whom were Sir *George Barclay*, Mr. *Charnock*, and Sir *William Perkins*; and, upon the Report of the Witness, and the rest that viewed it, it was resolved, the Assassination should be on this Side the Water, in the Lane between *Brentford* and *Turnham-Green*; and *Saturday* the 15th of *February* was fixed for the Execution of it: But the King not going abroad that Day, *Saturday* the 22d was resolved on; and two Men were posted at *Kensington* to give Notice of the King's going out. That on the *Friday* before the 22d, Sir *George Barclay*, Capt. *Charnock*, Sir *William Perkins*, and this Witness *(Porter)* met at the *Sun* Tavern in the *Strand*; and Sir *George Barclay* said, He was afraid the Thing was discovered; but the Witness answered, If it had, they should not have been in that House at that Time: And Sir *George* replied, *Let us go on and try another Day:* And Sir *William Perkins* being asked if his Horses were come to Town, he said, they were to come that Night: And the Witness saying, Two of his were not fit for Service, Sir *William* answered, He would send to Mr. *Lewis*, the Earl of *Feversham*'s Gentleman, for two more; and accordingly sent him two the next Morning, and let him know, Mr. *Lewis* could furnish two or three more. That the Witness did not see Sir *William Perkins* on *Saturday* the 22d, but he (the Witness) met some of the Conspirators, who were to assist in the Enterprize; and Notice was brooght them first, that the Guards were gone abroad, and the King would go out; at which they were all glad; but afterwards News was brought them that the King did not go out; whereupon, they concluded the Thing was discovered; and he *(Porter)* went out of Town.

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Here one of the Jurymen asked *Porter*, If there was any Discourse of the Assassination in the Presence of Sir *William Perkins*, and what he said to it?

Porter answered, He could not tell exactly what he said; but only that Sir *William* agreed to it, and was to furnish five Horses for it; and said it was necessary to be done, for it would facilitate the bringing the King in; though he could not engage himself personally in it, because he had a Regiment to look after.

Sweet's Evidence.

Then *Abraham Sweet* was sworn, and testified, That about *Christmas* last Sir *William Perkins* told him, he expected King *James*'s landing: He had the King's Word for it: His own Troops was composed of Old Soldiers; and that there were some Gentlemen who were Captains, and old Officers, that would serve as Voluntiers under him; and that these Words were spoken at Sir *William*'s House in *Hertfordshire*.

That Sir *William* also made a Journey into *Leicestershire*, and at his Return, told this Witness that he had met his Friends, and the West was as well inclined to the King's Interest as the North: That about the 11th of *February* Sir *William* sent for him (this Witness) to come to Town, and he came to Sir *William*'s Lodgings in *Norfolk-Street:* When he told him the Business he designed for him, he did not think he should do, because of his Family; but ordered him (the Witness) to send him up three of his strongest Horses out of the Country.

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try. That the Witneſs being ordered to come to Town again, Sir *William* then asked him, If he had made Proviſion for his Family? and when he anſwered No, Sir *William* asked him, Why he came up then? and he dined that Day with Sir *William*, Mr. *Charnock*, and one *Chambers*, who came that Morning from *Kenſington*, who ſaid *William* kept as cloſe as a Fox.

Eubank's *Evidence.*

Eubank, Sir *William*'s Groom, teſtified, That in *January* laſt, he went with his Maſter to *Leiceſter*, and that Captain *Scudamore* went with them, and one *Yarborough*, and a Gentleman in Black, who ſaid they came out of *Yorkſhire*, met them at *Leiceſter*.

That on *Friday* the 14th of *February* laſt, he brought up three Horſes to the *George* in *Holbourn*, and acquainting his Maſter Sir *William* with it, he ſaid he thought he ſhould go Home that Night, but did not go down till the *Monday* following, when Mr. *Holmes* went to him: That the *Friday* following they came to Town again, with four Horſes furniſhed with Piſtols; and the next Morning the Witneſs was ſent to *Kenſington* to one Mr. *Brown*, who belonged to the Kitchen, to tell him he came from a Gentleman who lay at a Confectioner's againſt *Gray*'s-*Inn* in *Holbourn*, and his Anſwer was, he had no Buſineſs to ſend; but wrote in the Witneſſes Almanack, he would come to Town about Ten o'Clock, which the Witneſs ſhewed to the Gentleman at the Confectioner's, a luſty, black Man, who ſpoke broad *Scotch* (Sir *George Barclay*), who bid the Witneſs tell his Maſter, he would be at his Chamber ready for him; and that his Maſter, thereupon bid the Witneſs make ready the Horſes, for he deſigned to go Home by and by; but he did not come to the Inn till three or four in the Afternoon; when Mr. *Lewis*, and the Lord *Feverſham*'s Gentleman came with him, and asked how many Saddles had been ſent in there, ſaying there ſhould have been Twenty-four in all, but there was but Twenty-two, and two of the Saddles were ſent to two Gentlemen whoſe Horſes ſtood at the *George*-Inn.

That the Witneſs was then ſent down into the Country, and on *Monday* received a Letter from his Maſter, to go to his Servant *Richard Evans*, at Sir *William*'s Houſe in *Warwickſhire*, with a Letter, which he did; and when *Evans* had read the Letter, they went to fetch ſix Boxes Home, that were at a Tradeſman's Houſe about two Miles off, and returning to his Maſter's Houſe with the Boxes in a Waggon, at ten or eleven o'Clock at Night, they buried the Boxes in the Garden; but he did not know what was in them, only *Evans* ſaid, they were precious Goods.

Hipwell's *Evidence.*

Thomas Hipwell teſtified, That on *Aſh-Wedneſday* laſt, about ſeven in the Evening, *Richard Evans*, and Sir *William Perkins*'s Tenant, came with a Waggon to his Maſter's, Mr. *Haywood*'s, and carried away ſix or eight Boxes.

Haywood's *Evidence.*

Haywood depoſed, That Mr. *Charnock* married his Siſter, and that Sir *William*'s Man brought him a Letter, about *Michaelmas* laſt, from Mr. *Charnock*, to deſire he might lodge the Boxes abovementioned at his Houſe, and that he took them in upon his Brother *Charnock*'s Account: And they were fetched away upon *Aſh-Wedneſday* laſt, as the former Witneſs depoſed.

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Whetſtone's *Evidence.*

Whetſtone, Sir *William*'s Tenant teſtified, That he carried the ſaid Boxes in his Waggon from Mr. *Haywood*'s, to Sir *William*'s Houſe, on *Aſh-Wedneſday*, in the Night-time, the Servant deſiring it might be done in the Night, and they were put into the Ground by the Side of the Garden-Wall, where he afterwards ſaw them dug up, and there were Arms in them.

Watts's *Evidence.*

Thomas Watts the Conſtable, depoſed, That he found ſeveral Boxes of Arms hidden underground in Sir *William Perkins*'s Garden *(viz.)* four dozen of broad two-edged Swords without Hilts, and a Box of Hilts, which he ſuppoſed were prepared for them, Thirty-two Carbines, and Twenty-five brace of Piſtols.

Freeman's *Evidence.*

Freeman, the Hoſtler of the *George*, teſtified, That Sir *William* had often three or four Horſes ſtood at that Inn, and in the Week before the Plot was diſcovered, there came in five on the *Friday* Night; four with Holſters and Piſtols, and a led Mare; and there were two pair of Jack-boots wrapped up in a Horſe-cloth; and they went away again about *Saturday* Noon.

That there were three other good Horſes ſtood at the *George*-Inn a Week; and Sir *William*'s Groom ſaid he had orders to ſee them fed, but he did not know whoſe they were: That the Horſes were generally about fourteen Hands high, there were no large ſized Horſes amongſt them, and thoſe of Sir *William*'s he had had a great while.

Turton's *Evidence.*

Turton, the Landlord of the *George*-Inn, depoſed, That the laſt Time Sir *William Perkins* came to his Inn, was the *Friday* before the Plot broke out, when he came with four or five Horſes, and ordered his Groom to get them ready againſt *Saturday* Morning; and on *Saturday* two Gentlemen rode out with two of them, and returning about three Hours afterwards, the Horſes were all of a Sweat, they had rid hard, and in the Afternoon all the Horſes went out of Town. That two or three of the Horſes which came up on *Friday* had Holſters, and there were four or five pair of Horſe Piſtols.

Sir *William* demanding if he did not always ride with Piſtols, *Turton* anſwered, he ſeldom came without two or three Pair, when he had Servants; and that he had known Sir *William* come up with more Horſes at other Times: He had uſed his Houſe four or five Years.

Sir Wm. Perkins's *Defence.*

Sir *William Perkins*, in his Defence, ſaid, That there was but one Witneſs to any one Overt Act, and the Law required two; and as to his Arms, the Witneſſes did not ſay for what Purpoſe they were provided; and, indeed, he found them in his Houſe when he came to his Eſtate, as he could have proved, if he had been allowed Time to ſend for his Witneſſes. He ordered them to be buried, becauſe it was a troubleſome Time, and they might have given ſome Cauſe of Suſpicion, as he was known to be affected to King *James*: However, the having Arms was no Treaſon. As to the Horſes, he had not bought one theſe

two

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two Years, and travelled no otherwiſe than he uſed to do; beſides, they were very little Horſes, (Pads) not fit for the Service they were preſumed to be for. He hoped his Life ſhould not be taken away without Proof, and the Law ſtrained to deſtroy him. Levying War was one Species of Treaſon, and Aſſaſſination, or Conſpiracy again the King's Life, was another. That his Lordſhip had known him many Years, and that his Education was not to War, but the Gown: He had always lived peaceably, and now, in his old Age, was grown lame in his Hands, and Feet, by the Gout: It could not therefore be ſuppoſed he ſhould be engaged in ſuch a Buſineſs as this.

That it did not appear he had a Troop; if he had, where were they? There was not one Perſon proved to be liſted, or named: And if he had fooliſhly bragged he had a Troop, when in Reality he had none, this was not Treaſon: He hoped he ſhould not be interpreted out of his Life: And inſiſted again That the Riſing in Arms and Aſſaſſination were different Treaſons: Depoſing the King was one Thing, and the conſpiring his Death, another. They had ſeen a King depoſed, and yet he was alive; and there ought to be two Witneſſes to each Species of Treaſon. And laſtly, he obſerved, that Capt. *Porter* became a Witneſs againſt him to ſave his own Life, and therefore ought not to be credited; and he was the only poſitive Witneſs to either of the Treaſons; all the reſt was but Preſumption.

The Chief Juſtice's Directions to the Jury.

The Chief Juſtice in ſumming up the Evidence, obſerved, That the Deſign of Sir *William Perkins* was the reſtoring of King *James*; and, in order to that, the dethroning of King *William:* That one Way of their effecting this Deſign was, by aſſaſſinating King *William*; the other, by Invaſion and Rebellion: That the conſpiring to invade the Realm, or depoſe the King, were Overt-Acts of High Treaſon, and of the ſame Species of Treaſon as the deſigning to aſſaſſinate him; it was a compaſſing and imagining his Death: And of this there were other Witneſſes, beſides *Porter*; that he told *Sweet*, his Troop conſiſted of old Soldiers; that he bought thirty Saddles, went into *Leiceſterſhire*, and, at his Return, related, that the Weſt was as well inclined as the North: That he had provided great Quantities of Arms, and buried them juſt as the Plot broke out: The Horſes and Saddles alſo came to Town juſt at that Time: All which were Overt-Acts of his compaſſing the King's Death.

As to the Priſoner's Objection, *That* Sweet *proved only Words, and Words were not Treaſon*; Theſe were Words that related to Things; and Mens Diſcourſes and Words explained their Actions. An Action, indifferent in it ſelf, might be ſo explained by Words as to be unlawful: It was lawful for a Man to buy a Piſtol; but if it could be plainly proved, from his own Words or Speeches, that the Deſign of buying it was to uſe it againſt the Perſon or Life of the King, that would make it an Overt-Act, or a Manifeſtation of a Treaſonable Deſign. And therefore, when Sir *William Perkins* ſaid, that the late King would come; that he had a Troop that conſiſted of old Soldiers; and theſe Arms were provided in this Manner, there was ample Proof for what Purpoſe he had provided them: It was not at all probable he found them in his Houſe; and his going into the Weſt, and declaring at his Return that the Weſt were as well inclined to the King's Intereſt as the North (if by the King, he meant King *James*) was another Evidence of his Guilt.

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The Jury, after half an Hour's Receſs, found Sir *William Perkins* GUILTY: And Sir *John Friend* being brought into Court, Sentence was paſſed upon them both as Traitors: And they were executed at *Tyburn* on *Friday* the 3d of *April*, 1696, when they delivered the following Papers to the Sheriffs.

Sir William Perkins convicted,

condemned, and executed.

Sir John Freind's *Paper.*

Sir John Freind's Paper left with the Sheriffs.

KNOWING that I muſt immediately give an Account to GOD of all my Actions, and that I ought to be eſpecially careful of what I ſay in theſe laſt Moments, I do ſolemnly profeſs, that what I here deliver is from my very Soul, with all the Heartineſs and Sincerity of a dying Chriſtian.

The Cauſe I am brought hither to ſuffer for, I do firmly believe to be the Cauſe of God and true Religion, and, to the beſt and utmoſt of my Knowledge and Information, agreeable to the Laws of the Land, which, I have evermore heard, do require a firm Duty and Allegiance to our Sovereign; and that as no foreign, ſo neither any domeſtick Power can alienate our Allegiance: For it is altogether new and unintelligible to me, that the King's Subjects can depoſe and dethrone him on any Account, or conſtitute any that have not an immediate Right in his Place. We ought, I think, not to do this; and ſurely, when it is done to aſſiſt him in the Recovery of his Right, is juſtifiable, and our Duty. And, however Things may ſeem at preſent, I do believe, I am ſure I heartily pray, that he ſhall be one Day reſtored to his Rightful Throne and Dominions.

As for any ſudden Deſcent of his Majeſty upon theſe his Dominions, in order to the Recovery of them, I declare I had no certain Knowledge of it; nor can I tell what Grounds there was to believe it; ſo little Reaſon had I to be in a preſent Preparation for it. I ſuppoſe it is not expected I ſhould here endeavour to clear my ſelf of the Aſſaſſination, which was not the Thing alledged againſt me; however, it was mentioned, through what Means I know not: As it was inſinuated to my Diſadvantage, I forgive ſuch as were therein inſtrumental; and I do alſo, from the very Bottom of my Soul, freely forgive, and beg of God to do ſo too, ſuch as were any ways acceſſary towards the taking away my Life, which I really look upon to be their Misfortune more than mine.

I profeſs my ſelf, and I thank God I am ſo, a Member of the Church of *England*; though, God knows a moſt unworthy and unprofitable Part of it; of that Church which ſuffers ſo much at preſent for a ſtrict Adherence to Loyalty, the Laws and Chriſtian Principles: *For this I ſuffer, and for this I die.*

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Though I have a perfect Charity for People of all Profeſſions, and do heartily wiſh well, and would endeavour to do ſo, to all my Fellow-Subjects, of what Perſuaſion ſoever. and indeed I have met with a great deal of Uprightneſs and Sincerity among ſome People of very different Opinions in Religious Matters.

And I hope and deſire it may not be taken as an uncharitable Cenſure, or undue Reflection, that I objected to the Legality of Popiſh Evidence, being adviſed ſo to do for my better Security, upon the Foundation of a Statute-Law.

Having owned myſelf a Member of the Church of *England*, I muſt take this Opportunity, and I do it for God's Glory, to apply my ſelf to you that are Royaliſts of that Church, and of the ſame Faith and Principles with my ſelf: And I beg of you, for God's Sake, and the love of your Souls, to be very conſtant and Serious in all Religious Offices, and holy Duties of Divine Worſhip and Service, which I have too much neglected, as I own to my great Sorrow: Let no Excuſe, no Dangers, prevent or hinder you in theſe moſt neceſſary and ſerious Matters; and be, I beſeech you, very careful and circumſpect in all your Actions, Behaviour, and Converſation, as I earneſtly exhorted all that came to me.

I have, I thank God, a great deal of Satisfaction in my preſent Sufferings, and have found it ſo ever ſince I have been under them; and bleſſed be God, it doth continually increaſe upon me: And I do now lay down my Life with all Chearfullneſs and Reſignation, in ſure and certain Hope of a Reſurrection, to eternal Life, through our Lord Jeſus Chriſt; through whoſe Merits I hope for the Pardon of my Sins, and the Salvation of my Soul.

And ſo, O Lord! into thy Hands I commend my Spirit; for thou haſt redeemed me, O Lord! thou God of Truth.

John Friend.

Sir William Perkins's *Paper.*

Sir *William Perkins*'s Paper.

IT hath not been my Cuſtom to uſe many Words, and I ſhall not be long upon this Occaſion, having Buſineſs of much greater Conſequence to employ my Thoughts upon. I thank God, I am now in a full Diſpoſition to Charity; and therefore ſhall make no Complaints, either of the Hardſhips of my Trial, or any other Rigours put upon me: However one Circumſtance I think my ſelf obliged to mention. It was ſworn againſt me by Mr. *Porter*, That I had owned to him, that I had ſeen and read a Commiſſion from the King to levy War upon the Perſon of the Prince of *Orange*. Now I muſt declare, that the Tenour of the King's Commiſſion, which I ſaw, was general, and directed to all his loving Subjects, to raiſe and levy War againſt the Prince of *Orange* and his Adherents; and to ſeize all Forts, Caſtles, *&c.* which I ſuppoſe may be a cuſtomary Form of giving Authority to make War; but, I muſt confeſs, I am not much acquainted with Matters of that Nature: But as for any Commiſſion particularly levelled againſt the Perſon of the Prince of *Orange*, I never ſaw nor heard of any ſuch.

It is true, I was privy to the Deſign upon the Prince; but was not to Act in it, and am fully ſatisfied that very few, or, none knew of it but thoſe who undertook to do it.

I freely acknowledge, and think it for my Honour to ſay, that I was entirely in the Intereſt of the King, being always firmly perſuaded of the Juſtice of his Cauſe; and I looked upon it as my Duty, both as a Subject and an *Engliſhman*, to aſſiſt him in the Recovery of his Throne, which I believe him to be deprived of, contrary to all right and Juſtice; taking the Laws and Conſtitutions of my Country for my Guide.

As for Religion, I die in the Communion of the Church of *England*, in which I was educated.

And as I freely forgive all the World, ſo whoever I may any ways have injured, I heartily ask them Pardon.

William Perkins.

The Remarks on the Trials for the Aſſaſſination-Plot, will be found at the End of Mr. Cook's *Trial.*

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Rookwood's *Trial.*

The Trial of AMBROSE ROOKWOOD, Gent. for *High-Treaſon*, at a Seſſions of *Oyer* and *Terminer*, held in the Court of *King*'s-*Bench*, on the 21ſt of *April*, 1696. 8 *W.* III.

The Indictment.

THE Indictment charges the Priſoner with High-Treaſon, in compaſſing and conſpiring the Death of the King, and the Subverſion of the Government, and to ſubject the People of this Kingdom to the Dominion and Slavery of the *French* King; and to that End, that he, together with *Robert Lowick*, *Charles Cranborne*, *Chriſtopher Knightley*, and other falſe Traitors, did on the 10th Day of *February*, in the Seventh Year of the King, in the Pariſh of St. *Paul*'s *Covent-Garden*, in the County of *Middleſex*, traitorouſly conſult and agree to aſſaſſinate his Majeſty; and that forty Horſemen, of which the Priſoner was to be one, ſhould lie in Ambuſh, and ſet upon the King's Coach at his Return from Hunting; one Party being to attack the Guards, while another murdered his Majeſty; That the Priſoner and his Accomplices did buy and provide Horſes and Arms to effect the ſame; and that the ſaid *Charles Cranborne* did carry Meſſages between the Conſpirators, and a Liſt of the Names of the Perſons who were deſigned to perpetrate the ſaid Aſſaſſination;

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tion; againſt the Duty of his Allegiance, *&c.*

The Priſoner being arraigned, and pleading Not Guilty, was ordered to be brought into Court again that Day ſeven-night, and he appeared at the Bar with the Counſel that had been aſſigned him, in Purſuance of the late Act, *viz.* Sir *Bartholomew Shower* and Mr. *Phipps*, on the 28th of *April*.

Objections of the Priſoner's Counſel.

The Priſoner's Counſel objected, That there being a Clauſe in the late Act, *That the Priſoner ſhall have a Copy of the Pannel of the Jurors who were to try him, duely returned by the Sheriffs, two days before the Trial*; the Return muſt be antecedent to his having a Copy: That they had indeed a Copy of the Array of the Pannel delivered them; but that was not a Copy of the Pannel *returned*; for it was no Return, until it came into Court.

But the Court ruled, that the giving a Copy of the Pannel, before the Return, ſufficiently ſatisfied the Words as well as the Intention of the Act; and that no other Conſtruction could be made without great Abſurdities.

Another Objection made by the Priſoner's Counſel was, That they had not a true Copy of the *whole* Indictment delivered them, as the late Act required; for that it did not appear before whom it was taken, the Time when, or the Place where.

The Attorney General anſwered, This Objection came too late; they had admitted it to be a true Copy, by pleading to it: And of that Opinion were the Court.

The Pannel being called over, the Priſoner challenged 34 peremptorily: After which a Jury was ſworn, and charged with the Priſoner.

Then his Counſel moved, that they might offer their Exceptions to the Indictment before Evidence given, according to the Words of the late Act of Parliament.

The Court anſwered They were too late; they ought to have moved this upon the Arraignment, before Plea pleaded, or at leaſt before the Jury were ſworn and charged with the Priſoner; for *after they were once charged, in Caſe of Treaſon, they muſt give a Verdict, and either acquit or convict him.*

That the Deſign of the Parliament, was to reſtrain the Priſoner from moving in Arreſt of Judgment, for Miſ-ſpelling, falſe *Latin*, or little Matters of Form, if he did not move it in a proper Time; having ſuch a Liberty allowed, him, as to have a Copy of the Indictment ſo many Days before he was compelled to plead: That although the Words of the Act were *before Evidence given*, it was nevertheleſs intended that they ſhould move at ſuch a Time before Evidence given, as the Law allowed; and that the Act did not eſtabliſh any new Method of Trial.

However, it was propoſed by the Court to the King's Counſel, That, ſince it was a new Act of Parliament, and the Priſoner might be led into this Miſtake by the Penning of the Act, they ſhould not take Advantage of his having lapſed; but indulge him ſo far, as to let him offer Exceptions now.

To this Mr. Attorney conſented, provided they would confine themſelves to ſuch Heads as were mentioned in that Clauſe of the Act, which only related to Matters of Form; and not offer any Thing to the ſubſtantial Part of the Indictment; which they had ſtill a Liberty of doing in Arreſt of Judgment.

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But the Counſel for the Priſoner refuſed to offer any thing, unleſs they might urge all their Exceptions together.

Objections to Porter's *Evidence.*

Mr. *Porter* being called to give Evidence, the Priſoner's Counſel oppoſed the ſwearing him, becauſe he ſtood convicted of Felony, and was not capable of being a Witneſs, and the Record of his Conviction was read, and the Priſoner's Counſel inſiſted, that though he had the King's Pardon, that would not reſtore him to his Credit, ſo as to make him capable of being a Witneſs.

A Pardon reſtores a Convict of Felony, before Attainder.

But the Court held, that the King's Pardon was as effectual as a Parliament Pardon, and either of them, before Attainder (as their Caſe was) prevented all Corruption of Blood: So that though a Man forfeited his Goods by Conviction, yet after a Pardon, he is capable of having new Goods, and ſhall hold them without any Forfeiture for ever: For the Pardon reſtores him to his former Capacity, and prevents any further Forfeiture. Indeed, if he had been attainted (condemned or out-lawed) whereby his Blood would have been corrupted, no Pardon, whether it were by the King, or by the Parliament, could purge his Blood, without a Reverſal of the Attainder, by Writ of Error, or Act of Parliament, or expreſs Words in the Act, reſtoring him to Blood: The Conviction indeed, might be objected to his Credit, but could not be urged againſt his being a Witneſs.

Porter's *Teſtimony.*

Then Captain *Porter* was ſworn, and teſtified That there was a meeting of the Conſpirators at the *Globe*-Tavern in *Hatton Garden*, among whom was the Priſoner at the Bar, Captain *Rookwood*, and there they conſulted of the beſt means to aſſaſſinate the King as he came from *Richmond:* And ſome being of Opinion, that it was beſt to be attempted on the other Side the Water, and others, that it ſhould be done on this Side, Perſons were appointed to view both Places; and upon their Report, it was agreed to do it in the Lane that leads from *Turnham-Green* to *Bentford*; and *Saturday*, the 15th of *February*, was appointed to be the Day, that Mr. *Rookwood*, the Priſoner, was to command a Party of Men that came from *France*, who were to attack the Guards on one Side, and the Witneſs and Mr. *Charnock*, with their Diviſion, were to fall upon the Guards on the other Side, while Sir *George Barclay*, with four Men out of each Party, were to attack the King in his Coach, and kill him, and all that were in it: That there were at this laſt Meeting, Sir *George Barclay*, Captain *Charnock*, Sir *William Perkins*, Major *Holmes*, the Priſoner, Captain *King*, and this Witneſs; and they met at the *Globe*-Tavern, in *Hatton-Garden*.

That on the 15th, Sir *George Barclay* and the Priſoner were at this Witneſs's Lodging, and *Durance*, one of their orderly Men, who lay at *Kenſington* to get Intelligence, brought Word that the King was preparing to go abroad,

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abroad, and a great many Noblemen and Gentlemen with him: However, it was agreed by them to execute the Deſign, if the King went abroad that Day (the Priſoner being preſent): But the Witneſs could not ſay he ſaw him afterwards.

It being demanded, What the Priſoner ſaid, to expreſs his Conſent to this Attempt? *Porter* anſwered, he heard Mr. *Rookwood* ſay, it was a very deſperate Thing, and he was not very willing to engage in it; but, when Sir *George Barclay* ſaid, he ſhould command the Party, he replyed in *French*, *There's an End of it.*

Then it was demanded, If Mr. *Rookwood* made any Propoſal at that ſecond Meeting? *Porter* anſwered, he could not atteſt he heard Mr. *Rookwood* ſay any Thing in particular; but they all agreed to do the Thing that Day.

Harris's *Evidence.*

Then Mr. *Harris* was called, and the Priſoner's Counſel objected againſt the ſwearing him: That he was entitled to a Thouſand Pounds Reward by the Proclamation, on convicting the Priſoner: But this appearing a Miſtake, he was ſworn, and teſtified, That he was at St. *Germains* the 14th of *January* laſt *N. S.* That King *James* then ſent for him, and told him, he was ſenſible he had ſerved him well, and now he had an Opportunity of doing ſomething for him. That he would ſend him into *England*, where he ſhould be ſubſiſted; and he ſhould follow the Orders of Sir *George Barclay*; and that the King ordered him twenty *Louis'dors* to bear his and his Comrade *Hare*'s Charges; and if they were Wind-bound at *Calais*, the Preſident of *Calais* was to ſubſiſt them there, which he did eight or nine Days. That they afterwards came to *London*, and the King having told them they might find Sir *George Barclay* on *Mondays* and *Thurſdays* in the Evening in *Covent-Garden-Square*, and might know him by a White Handkercheif hanging out of his Pocket, they went thither; but could not meet Sir *George* there: But two or three Days after they came to Town, Sir *George* had Notice of his Arrival, and ſent for him, and enquired after the King and Royal Family; and ordered him five Shillings a Day Subſiſtence while he had no Horſe, and ſix Shillings a Day afterwards: And that the firſt *Saturday* the Aſſaſſination was deſigned, he gave him a Guinea.

That as to Mr. *Rookwood*, the firſt *Saturday* the Aſſaſſination was to be, he ſaw him at Mr. *Burck*'s Lodgings, in a great Hurry, and ſome Conſternation. That he asked him what they were going about, and Mr. *Rookwood* told him, If he would go down to Captain *Counter*, he ſhould know: And that Captain *Counter* ſaid, they muſt immediately get ready to go to *Turnham-Green*. That they went to the *Woolpack* there, and Sir *George Barclay* came in, and declared they were all Men of Honour; and that the Buſineſs they were going about was, to attack the Prince of *Orange:* But *Durance* came in after that, and ſaid the Prince of *Orange* did not go out that Day. That he was much ſtartled when they talked of attacking the Prince of *Orange*; and that he came next Morning to Mr. *Rookwood*, and asked him, If they were to be the Murderers of the Prince of *Orange?* and Mr. *Rookwood* ſaid, I am afraid we are drawn into ſome ſuch Buſineſs; but if I had known it before I came over, I ſhould have begged the King's Pardon at St. *Germains*, and not have come over hither. That afterwards, Mr. *Rookwood*, Mr. *Lowick*, and he, had a Meeting in *Red-Lyon-Fields*, where they diſcourſed about the Matter. That Mr. *Rookwood* ſaid, It was a barbarous Thing; but he was ſent over to obey Sir *George Barclay's* Orders, which he had ſeveral Times declared he was reſolved to do.

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That on *Saturday* Morning afterwards, he came to Mr. *Rookwood*'s Lodging, and from thence went to Sir *George Barclay*'s; and there Mr. *Rookwood* gave him a Note or Liſt of ſeveral Names, particularly Mr. *Hungate*, Mr. *Hanford*, Mr. *Hare*, and his own Name at the Top; but that they were the Sham Names they all went by. That he was called *Jenkins* himſelf, and that King *James* directed him to go by that Name. That when Mr. *Rookwood* gave him the Liſt, he told him he was going to *Turnham-Green*, and he muſt go along with him; and ſaid, ſmiling, That he ſhould be his Aid de Camp, and get the reſt of the Gentlemen ready: And that accordingly he went to look for ſeveral of the Perſons; and came back again, and found the Priſoner lying on his Bed, Sir *George Barclay* having told him, the Prince of *Orange* did not go out that Day. That *Rookwood*, *Bernarde*, *Lowicke*, and himſelf had met ſeveral Times in *Red-Lyon-Fields*, and talked of attacking the Prince of *Orange*.

That his Horſe ſtood in my Lord *Feverſham*'s Stables, in *Somerſet-Houſe*; as did Mr. *Hungate*'s and Mr. *Hare*'s: He thought there might be five or ſix there, that were deſigned for the ſame Expedition. That Major *Holmes* delivered him his Horſe there, and he had him to another Stable; and that he had Arms delivered him by Captain *Counter*.

Chamberlain's *Evidence.*

Chamberlain being ſworn, teſtified, That Six Horſes were ſent into *Somerſet*-Houſe Stables: That Mr. *Lewis* ſent a Note to take Care of them; and they were taken away by Perſons unknown to this Witneſs, about a Week before the Plot was diſcovered: Three of them had ſtood there ten Days, and the other but a Night or two.

Rookwood's *Defence by his Counſel.*

John Allen confirmed the Teſtimony of the former Witneſs: Then the Priſoner's Counſel objected, That there were not two Witneſſes to any Overt-Act; and that the being at a treaſonable Conſult was but Miſpriſion of Treaſon, according to ſome Opinions.

The Chief Juſtice anſwered, He did not know what Opinions they meant (there had been ſome ſuch Diſcourſes in Pamphlets, 'twas true; *particularly thoſe of Sir* John Hawles *on the Lord* Ruſſel's *Caſe)*; but it was always held for Law, that Conſulting and Agreeing was an Overt-Act.

The Priſoner's Counſel anſwered, That there was no Evidence of an Agreement; and that the Liſt mentioned to be given by the Priſoner to *Harris*, ought not to be given in Evidence, there being no ſuch Overt-Act laid in the Indictment. By the late Act, no Evidence was to be given of an Overt-Act nor laid in the Indictment.

Then

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Then they were about to call ſome Witneſſes, to prove that Mr. *Porter* was guilty of Robbing on the Highway, of Clipping, Fornication, and Buggery; which they thought would ſufficiently take off the Credit of his Evidence: But the Court ruled, That no Evidence ought to be given of any particular Crime a Witneſs had been guilty of, unleſs he had been convicted of it; but Evidence might be given of his Character in general.

The Priſoner's Counſel anſwered, It was the Crime that rendered the Man infamous; and they did not know why a Man that had the good Fortune not to be taken and puniſhed, ſhould be in a better Condition, as to the Credit of his Teſtimony, than one that was taken and underwent the Puniſhment of the Law.

The Chief Juſtice's Direction to the Jury.

The Counſel on both Sides agreeing to leave it to the Chief Juſtice to ſum up the Evidence, his Lordſhip obſerved, That it had been objected by the Priſoner's Counſel, That there was no Overt-Act, legally proved, of a Deſign againſt the King's Life: But Captain *Porter* was poſitive he was at the Conſult at the *Globe*-Tavern, where it was debated and reſolved on. And though Mr. *Rookwood* did diſlike it on his firſt being acquainted with it, yet, being ſent over to obey the Orders of Sir *George Barclay*, and Sir *George* producing a Scheme wherein he was to command the Party, and telling him he muſt obey Orders, he anſwered, in *French*, *There is an End of it:* And whether that did amount to a Conſent and Agreement to be engaged in it, he left to the Jury; for, if it did, it was plainly an Overt-Act.

Then *Harris* teſtified, That *Rookwood* told him, he ſhould be of his Party; be his *Aid de Camp*, and go to *Turnham-Green*, and attack the Prince of *Orange*; and that *Rookwood* gave him a Liſt of the Men he was directed to get ready; which was another Overt-Act.

Here *Rookwood* objected, That the Liſt given to *Harris* was not mentioned in the Indictment; but the Liſt in the Indictment referred to Mr. *Cranborne*.

The Chief Juſtice anſwered, That this Liſt of Men, given to *Harris*, was an Evidence of the Conſent and Agreement of Mr. *Rookwood* to command the Party.

To which the Priſoner's Counſel replied, That, by the Words of the late Act, no Overt-Act could be given in Evidence, that was not expreſsly laid in the Indictment; and they had charged in the Indictment, That *Cranborne* had carried a Liſt backward and forward, as an Overt-Act of Treaſon; which ſhewed the King's Counſel thought it neceſſary to be alledged by this Act of Parliament, or they could give no Evidence of it. But the Liſt they gave Evidence of here, was the Liſt ſuppoſed to be delivered by the Priſoner to *Harris*, which was no Evidence of the Liſt alledged to be carried about by *Cranborne:* And as this Liſt, given to *Harris*, was not mentioned in the Indictment, no Evidence could be given of it.

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The Chief Juſtice ſaid, Although the Act did exclude the giving Evidence of an Overt-Act that was not laid in the Indictment, yet it did not exclude ſuch Evidence as was proper to prove that Overt-Act that was laid in the Indictment. Therefore the Queſtion was, Whether the giving this Liſt to *Harris* did not prove ſome Overt-Act that was alledged in the Indictment? There was laid, in the Indictment, an Agreement to kill the King; and, if that was proved, That was an Overt-Act of this Treaſon. And, when the Agreement to that Deſign was proved, there was no Doubt but his giving a Liſt of the Men, who were to be Actors in it to *Harris*, was a further Proof that he did agree to it: And then it was very proper to be given in Evidence: For if by the new Statute no one Act could be given in Evidence to prove another, then not only the Overt-Act, but alſo all the Evidence of that Act, muſt be expreſſed in the Indictment.

Concluding, That if the Jury did, in the firſt Place believe, that there were ſuch Conſults and Meetings, where the intended Aſſaſſination of the King was debated and reſolved on, and that Mr. *Rookwood* was preſent, and did agree to it, that was an Overt-Act: And again, if they were ſatisfied, That there was an Agreement to prepare and produce a Number of Men to ſet upon the King and his Guards in the Manner they had heard, and the Priſoner was concerned in making this Proviſion, and was to have a Poſt, and command a Party in that attack; That was a further Proof of that Conſent and Agreement that was laid in the Indictment.

Then the Jury withdrew, and after a Receſs of a Quarter of an Hour, brought in the Priſoner GUILTY.

The Sentence and Execution will be found at the End of Lowick's *Trial, who was condemned the ſame Day Mr.* Rookwood *was condemned.*

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Cranborne's Trial.

The Trial of CHARLES CRANBORNE, for *High-Treaſon*, at a Seſſions of *Oyer* and *Terminer*, held for the County of *Middleſex*, in the Court of *King's-Bench*, *Weſtminſter*, on *Tueſday* the 21ſt of *April*, 1696. 8 *W.* III.

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The Priſoner's Irons taken off.

THE Priſoner being brought to his Trial in Irons, the Chief Juſtice ordered them to be knocked off, that he might ſtand at Eaſe to manage his Defence.

The Indictment.

The Priſoner was indicted for High-Treaſon, in compaſing the Death of the King and the Subverſion of the Government *(See* Rookwood's *Trial):* But the particular Overt-acts with which the Priſoner was charged, were, That he did meet and conſult with the ſaid Traitors, how to aſſaſſinate the King, and

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agreed that Forty Horſemen, of which the Priſoner did undertake to be one, ſhould attack the King's Coach as he came from Hunting: That he did provide Horſes and Arms for that Purpoſe, *and carried a Liſt of the Conſpirators from one to another.*

Exceptions to the Indictment.

The Priſoners Counſel took ſeveral Exceptions to the Indictment, as that it ſaid *Anno Regni dicti Domini Regis nunc ſeptimo*, and *Lewis* was the laſt King mentioned: To which it was anſwered, that *Dominus Rex* muſt be underſtood of the King of *England*. 2. That it was ſaid, *diverſis diebus & vicibus, tam ante quam poſtea*, and afterwards ſays, *poſtea ſcilicet eodem decimo die Februarij*, which was repugnant: To which it was anſwered, that *poſtea* was another Sentence, and related to different Matters. 3. That this Indictment, being againſt a Subject born, ought to have had the Words, *contra Supremum naturalem Ligeum Dominum ſuum.*

The Chief Juſtice anſwered, he had ſeen abundance of Precedents, that had only the Words *contra Ligeantiæ ſuæ debitum.* That Allegiance was the *Genus*, and if that was ſuggeſted, all the *Species* of Allegiance, whether natural or local, were comprehended in it. 4. It was objected, that one of the Overt-acts was not laid to have been done *traitorouſly*. It being only ſaid, *conſenſerunt agreaverunt & aſſenſerunt, quod quadraginta homines, &c.*

The Chief Juſtice anſwered, That after they had laid the Word *Proditorie*, as to the particular Treaſon, It was not neceſſary to lay it again to the Overt-Act, for the Overt-Act was but the Evidence of the Treaſon: The Treaſon it ſelf lay in the compaſſing, which was an Act of the Mind. 5. That it did not appear, any of the Overt-Acts were the Preſentment of the Jury: In reciting the Overt-Acts, they ought to have begun again with a *Quodque*, or ſomething that ſhould have referred to the firſt *Juratores preſentant*; or elſe they ſhould have begun quite again with a *Juratores ulterius preſentant*, and not have coupled them, as this was, with an *Et*. To this the Chief Juſtice anſwered, that the High-Treaſon charged in the Indictment was but one and the ſame Offence: The other Facts mentioned were but Overt-Acts to manifeſt this Treaſon *(viz.)* The Compaſſing the Death of the King; and therefore he thought the Form of the Indictment better as it was, than if it had been otherwiſe.

A Juryman who had convicted his Accomplices on this Jury.

Then the Priſoner's Counſel moved, That thoſe, who were upon the laſt Jury, might not be called upon this; becauſe they had given a Verdict upon the ſame Indictment, and therefore could not be ſo indifferent as the Law intended they ſhould be.

The Court anſwered, Though it was upon the ſame Indictment, the Evidence was not the ſame; for they were diſtinct Offences.

The Evidence of Porter.

Then the King's Witneſſes were called; and firſt Mr. *Porter* was ſworn, and teſtified, That about a Year before the Aſſaſſination Plot was on Foot, he employed *Cranborne* the Priſoner, to buy Arms of the Brokers at ſecond Hand: That he gave him Ten Pounds at ſeveral Times, and he bought him Ten Caſe of Piſtols, and brought a Sword-Cutler to him, of whom the Witneſs bought Twenty Swords: That when Sir *George Barclay* came to *London*, he (the Witneſs) acquainted *Cranborne* with the intended Aſſaſſination, and he was ready both *Saturdays* to go with him. That on *Saturday* the 22d, he ſent *Cranborne* to Sir *William Perkins* for two Horſes, and returned, and ſaid, He knew where to have the two Horſes, and that the King was to go out that Day; but Mr. *Charnock* was afraid they ſhould want their full Number of Men, and deſired him *(Porter)* to ſend the Names of his Men: That he did ſo, and *Cranborne* brought back the Liſt of his *(Porter's)* Men, with a Liſt of Mr. *Charnock's* Men written underneath; and at the ſame Time News was brought, that the King did not go out that Day. 1696. W. III.

It being demanded, for what Purpoſe *Cranborne* was employed to buy Arms a Year before this Plot? *Porter* anſwered, *Cranborne* knew he was a Captain in Colonel *Parker's* Regiment, and thoſe Arms were bought to be in a Readineſs againſt the King landed, which had been deſigned ſeveral Times.----- That the Week before the 15th of *February*, he told the Priſoner, he had ſet him down to be one of his Party in the Enterprize againſt the King, and would provide him Horſe and Arms, and he (the Priſoner) agreed to go along with him; and the *Friday* before the 15th, he ſent him with three Caſe of Piſtols to Sir *William Perkins*, to furniſh the three Men, he was to mount with his own Horſes; and on the *Friday* before the 22d, he ſent him to look after the Horſes which *Jeffery Gunn* ſaid he could help him to; and *Cranborne* brought him Word, that he and *Gunn* had found three Hackney Horſes in *Bloomsbury* for their Purpoſe; and that he told *Cranborne*, the Conſpirators were reſolved to put the Deſign in Execution the next Day, and that *Cranborne* drank the Health with them, *To the Squeezing of the Rotten Orange.*

De la Rue's Evidence.

Mr. *De la Rue* teſtified, That he met *Cranborne* the Priſoner with Mr. *Porter*, on *Saturday* the 15th, being the firſt Day the Aſſaſſination was intended; that he ſaw him at Captain *Porter's* on *Saturday* the 22d, and Mr. *Porter* ſent *Cranborne* with a Liſt of the Conſpirators to Mr. *Charnock:* That he brought the Liſt back, with a Liſt of Names Mr. *Charnock* had added; and *Cranborne* told Mr. *Porter*, that the King did not go out that Day; and Mr. *Charnock* was apprehenſive the Thing was diſcovered, and deſired him *(Porter)* to have a Care of himſelf; as for his Part he was reſolved not to lie at Home that Night: That *Keys* the Trumpeter came in while they were at Dinner, and told them, my Lord *Oxford's* Regiment of Guards was returned from *Richmond* foaming, and he ſaw the King's Coaches returned to the *Meuſe-Gate*, Mr. *Cranborne* being preſent, who after Dinner drank the uſual *Jacobite* Healths with them, particularly that, *To the Squeezing of the Rotten Orange:* But imagining the Thing had taken Air, the Company ſoon broke up, and *Porter* went out of Town.

Pendergraſs's Evidence.

Captain *Pendergraſs* teſtified, That he dined with *Cranborne* and ſeveral more of the Conſpirators, at the *Roſe* Tavern in *Covent-Garden*,

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Garden, on *Friday* the 14th of *February*, and there they diſcourſed of getting ready to aſſaſſinate the King the next Day: That the next Day, *Saturday* the 15th, they dined at the *Blue-Poſts* in *Spring-Garden*, and diſcourſed of the Aſſaſſination, and were mightily concerned when they heard the King did not go out that Day; but appointed it to be done the *Saturday* following: *And Mr.* Pendergaſs *confirmed the Evidence of the two former Witneſſes in ſeveral other Particulars.*

Cranborne *convicted.*

The Chief Juſtice demanding, If he was ſure *Cranborne* did agree to this Matter before the 15th? *Pendergraſs* anſwered, he was ſure of it; he agreed to it on the 14th at the *Roſe* Tavern, and to make one in the Execution of the Deſign.

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Then the Chief Juſtice ſummed up the Evidence, and the Jury withdrawing, returned within a quarter of an Hour with their Verdict, that the Priſoner was GUILTY.

See the Sentence and Execution at the End of Lowick's *Trial.*

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The Trial of Major ROBERT LOWICK, for *High-Treaſon*, at the Seſſions of *Oyer* and *Terminer*, held for the County of *Middleſex*, in the Court of *King's-Bench* at *Weſtminſter*, on *Wedneſday* the 22d of *April*, 1696. 8 *W.* III.

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Lowick's *Trial.*

The Indictment.

THE Indictment charges the ſaid *Robert Lowick* with High-Treaſon, in compaſſing and imagining the Death of the King; and ſets forth, That the Priſoner, together with *Chriſtopher Knightley*, *Ambroſe Rookwood*, *Charles Cranborne*, and other falſe Traitors, did, on the 10th Day of *February* in the Seventh Year of his preſent Majeſty, and divers other Days and Times, as well before as after, at the Pariſh of St. *Paul's Covent-Garden*, in the County of *Middleſex*, conſult and agree, by lying in wait, to aſſaſſinate and murder his Majeſty: And in order to effect the ſame, that Forty Horſemen or thereabouts, of whom the ſaid *Robert Lowick*, *Chriſtopher Knightley*, *Ambroſe Rookwood*, and *Charles Cranborne* were to be four: And every one of them traitorouſly took upon himſelf to be one ſhould ſet upon the King in his Coach, and upon the Guards attending him as he came from *Richmond*, and ſo ſhould aſſaſſinate and murder his ſaid Majeſty: And that they, the ſaid *Robert Lowick*, *Chriſtopher Knightley*, &c. on the Day and Year aforeſaid, the better to execute their ſaid traitorous Intentions, did provide Horſes and Arms, *&c.* againſt the Duty of their Allegiance, *&c.*

Exceptions to the Indictment,

The Priſoner being arraigned, his Counſel objected, that the Time and Place were not aſcertained in every Overt-Act that was laid in the Indictment: The Time and Place, when and where they met and diſcourſed of the Ways and Means to kill the King, indeed, were mentioned; but when they came to the *Aſſenſerunt*, *Conſenſerunt*, and *Agreaverunt*, which were other Acts, they had neither aſcertained Time or Place; and they inſiſted that the Court ought not to permit them to give Evidence, therefore, of this Part of the Indictment, which was vicious----The Chief Juſtice anſwered, The Indictment ſaid, They met ſuch a Day at St. *Paul's Covent-Garden*, and conſulted to kill the King, and conſented and agreed that it ſhould be done in this Manner, which muſt refer both to the Time and Place mentioned in the Beginning of the Indictment, and they might give Evidence of it; becauſe that this was but a ſetting forth the Manner agreed upon for the Execution of the Deſign which was before conſulted of: And if it had been omitted, there would have been a ſufficient Overt-Act alledged to prove the compaſſing the King's Death: For if People meet at ſuch a Time and Place, and propoſe Means to effect this, the Indictment would be good without laying the particular Means agreed on; and they might give this in Evidence, as a Proof of that Overt-Act.

anſwered by the Court.

The Evidence of Harris.

Then the Witneſſes were called, and firſt Mr. *Harris* was ſworn, who teſtified, That he was ſent from *France* by King *James*, and ordered to obey Sir *George Barclay*'s Orders, who ſubſiſted him in *London*, giving him five Shillings a Day before he had a Horſe, and ſix Shillings a Day after he furniſhed him with a Horſe: That he ſaw the Priſoner, Major *Lowick*, at a Confectioner's over-againſt *Gray's-Inn* in *Holbourn* (where Sir *George Barclay* and Mr. *Counter* lodged), on the firſt *Saturday* the Aſſaſſination was intended: That before the following *Saturday* he met Mr. *Lowick* in *Red-Lyon-Fields*, and diſcourſed with him of the Aſſaſſination, obſerving, how barbarous a Thing it was that they ſhould be ſent over to be Murderers of the Prince of *Orange*; and the Major anſwered, It was ſo; but, in Concluſion, ſaid, he would obey Orders, and was ſure Sir *George Barclay* would not do it without Orders: And, as they were talking, they met Sir *George Barclay*, and Mr. *Holmes*, on Horſeback, and ſpoke to them: That afterwards Mr. *Lowick* told this Witneſs, the Thing was diſcovered, and that his Name and other Gentlemen's were given in, as one *Harriſon* informed him, and adviſed him not to lie in his Lodgings; and believed it would not be ſafe for the reſt to lie in their Lodgings.

That Mr. *Lowick* ſeeing him in a Sweat on *Saturday* the 22d of *February*, and demanding the Reaſon of it, the Witneſs told him, He had been getting Capt. *Rookwood*'s Party ready; and *Lowick* anſwered, You may very well do it, for you have ſix Shillings a Day, and I have nothing, and yet brought a couple of Men at my own Charge; and their Horſes cannot be diſcharged unleſs I go. It being asked, Why they were to be diſcharged that Day? *Harris* ſaid, Becauſe Capt. *Rookwood* had

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had told *Lowick*, the Prince of *Orange* did not go out that Day.

Bertham's *Evidence.*

Then Mr. *Bertham* was ſworn, and teſtified, That about the Beginning of *February* laſt, Major *Lowick* asked him, if he would eſpouſe any Thing that might be for his Advantage? and he anſwered, He thought he might eſpouſe any Thing the Major thought fit to engage in; and the Major bid him ask no more Queſtions. That on the 14th of *February*, the Major deſired him to be at his Lodgings, and told him, when he came, he believed they ſhould ride out in a little Time: He believed the King was to be ſeized in his Coach; and then gave him a Guinea to buy Neceſſaries: That the Major deſired him not to be out of the Way, but to meet him the next Morning at the Purl-houſe in *Hart-ſtreet*; but he did not meet him; and the next Time he ſaw the Major, he asked him, why he did not meet him according to his Appointment? and ſaid he believed, if the King had been in the Field, he would have done the ſame.

It being demanded, if he was not told the Deſign? *Bertham* anſwered, The Major did not tell him of any other Deſign than he had mentioned, for he believed he knew of it; the Witneſs thought ſo at leaſt. Being asked, If this Money was given him in Charity, he anſwered, The Major had given him Money ſeveral Times; and the Reaſon he believed was, that they were both Natives of one Town, and nearly related.

One of the Jurymen asked *Bertham*, If he underſtood what the Major meant by riding out ſuddenly? he anſwered, He believed, it was about ſeizing and killing the King (which he underſtood was deſigned by Mr. *Charnock*); and he did not think it lawful, and therefore he did not meet the Major.

The Major demanding, if *Bertham* ever knew him guilty of any bloody Thing? *Bertham* anſwered, He had known him theſe 20 Years, and he had always the Character of a good Man, and was ready to ſerve any one in Neceſſity: That he was bred a Soldier, had ſerved King *James* in *Ireland*, and ſaved the Lives of many a Priſoner the Enemy took there, as the Priſoners themſelves told this Witneſs.

Fiſher's *Evidence.*

Capt. *Fiſher* being ſworn as a Witneſs, teſtified nothing that could affect the Priſoner, only that he met him on the 8th of *February*, and he ſaid he ſhould be ready to ſerve his Maſter, King *James*, to the utmoſt of his Power; and that there was an Act of Parliament on Foot, that nothing ſhould affect a Man's Life, in Treaſon, that was not proved by two Witneſſes; and therefore nothing treaſonable ought to be diſcourſed before more than one at a Time.

Then Sir *Bartholomew Shower* ſummed up the Evidence, and made his Obſervations on it for the Priſoner.

His Defence by Sir Bartholomew Shower.

Sir *B. Shower*. May it pleaſe your Lordſhip, and you Gentlemen of the Jury: I am of Counſel in this Caſe for the Priſoner at the Bar, and we do hope here is not Evidence ſufficient to convict him of High-Treaſon: The Queſtion is not, whether there was a Plot or a Conſpiracy to aſſaſſinate the King, or to prepare for an Invaſion; but all that you are to conſider Gentlemen, is, whether the Evidence againſt Mr. *Lowick* be ſufficient to convince you, that he did deſign to ſeize and aſſaſſinate the King: There are three Witneſſes produced; but we think this laſt Witneſs, *Fiſher*, his Teſtimony does not hurt him in the leaſt. We know your Lordſhip will declare, and direct the Jury, that the Evidences in a Caſe of Treaſon ought to be plain, not only with Reſpect to the Fact, that it was done; but alſo of ſuch Facts as are the Evidence of a Man's Intentions, and theſe are not to be conſtrued by Strains, and Intendments, or Implications: Unleſs they be ſuch as evidently, naturally, and to common Underſtanding, expreſs the Intention, it cannot be good Evidence in Treaſon. Now, we ſay, that Captain *Fiſher* has ſaid nothing at all that will affect the Priſoner; for all that he ſays, is, that on the eighth of *February*, he ſaid he was ready to ſerve his Maſter to the utmoſt of his Power; and any Words, as well as theſe may be conſtrued to make a Man guilty of Treaſonable Intentions: For it might be a Recollection of Favours received, or it might be a grateful Intent to ſerve him upon particular Occaſions; but that is no Evidence upon this Indictment: Suppoſe it was to ſerve him upon the ſuppoſed intended Invaſion; yet, with Submiſſion, that is not Evidence of the Overt-Act laid here; here is no Overt-Act mentioned, of preparing Arms, or encouraging Men, or ſeducing the King's Subjects, in order to the better reſtoring of the late King *James*, or the expected Landing of the *French*, or the like. All that is laid to the Priſoner's Charge, is the compaſſing the King's Death, and a Deſign to aſſaſſinate him in his Coach; and in order to the Aſſaſſination he was to buy Arms and Horſes: Now all that he ſays is quite of another Nature, of a quite different Strain, and has no Tendency to this Matter; and nothing he ſays, that *Lowick* ſhould ſay, but is applicable the other Way, and tends more naturally to the Invaſion, than to the Aſſaſſination. Your Lordſhip obſerves, there was ſome Notice taken of what *Lowick* ſhould ſay concerning the Act of Parliament, That he would not talk with above one at a Time: How far, when Life is concerned, ſuch looſe Diſcourſe ought to be inforced before a Jury, I muſt leave to your Lordſhip; though a Man may be innocent, yet he may be cautious, and the more innocent, perhaps the more cautious; but that is applicable to the Invaſion too, and has no Relation to the Treaſon in this Indictment more than any other: It ſhews he was more wary than others were, but it is not applicable to the Fact that he now ſtands charged with. Then the whole of the Evidence depends upon the Teſtimony of Mr. *Harris* and Mr. *Bertham*; and we think they are not two Witneſſes to one Thing; and what they ſay muſt be ſtrained, and intended, and preſumed, to make Evidence of Treaſon. For what Mr. *Harris* ſays about the Diſcourſes between him and the late King *James*, about receiving Orders from Sir *George Barclay*, and his Paſſage over from *France*, and the ſeveral Stages he and Mr. *Hare* travelled, and the Diſcourſes

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The Priſoner's Witneſſes.

Then the Priſoner called ſome Witneſſes, who declared, That he was an honeſt, good-natured, virtuous Man, free from Paſſion and Malice: And the Priſoner made the moſt ſolemn Proteſtation of his Innocence: After which Mr. Attorney-General made his Obſervations on the Evidence for the King.

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had told *Lowick*, the Prince of *Orange* did not go out that Day.

Bertham's *Evidence.*

Then Mr. *Bertham* was ſworn, and teſtified, That about the Beginning of *February* laſt, Major *Lowick* asked him, if he would eſpouſe any Thing that might be for his Advantage? and he anſwered, He thought he might eſpouſe any Thing the Major thought fit to engage in; and the Major bid him ask no more Queſtions. That on the 14th of *February*, the Major deſired him to be at his Lodgings, and told him, when he came, he believed they ſhould ride out in a little Time: He believed the King was to be ſeized in his Coach; and then gave him a Guinea to buy Neceſſaries: That the Major deſired him not to be out of the Way, but to meet him the next Morning at the Purl-houſe in *Hart-ſtreet*; but he did not meet him; and the next Time he ſaw the Major, he asked him, why he did not meet him according to his Appointment? and ſaid he believed, if the King had been in the Field, he would have done the ſame.

It being demanded, if he was not told the Deſign? *Bertham* anſwered, The Major did not tell him of any other Deſign than he had mentioned, for he believed he knew of it; the Witneſs thought ſo at leaſt. Being asked, If this Money was given him in Charity, he anſwered, The Major had given him Money ſeveral Times; and the Reaſon he believed was, that they were both Natives of one Town, and nearly related.

One of the Jurymen asked *Bertham*, If he underſtood what the Major meant by riding out ſuddenly? he anſwered, He believed, it was about ſeizing and killing the King (which he underſtood was deſigned by Mr. *Charnock*); and he did not think it lawful, and therefore he did not meet the Major.

The Major demanding, if *Bertham* ever knew him guilty of any bloody Thing? *Bertham* anſwered, He had known him theſe 20 Years, and he had always the Character of a good Man, and was ready to ſerve any one in Neceſſity: That he was bred a Soldier, had ſerved King *James* in *Ireland*, and ſaved the Lives of many a Priſoner the Enemy took there, as the Priſoners themſelves told this Witneſs.

Fiſher's *Evidence.*

Capt. *Fiſher* being ſworn as a Witneſs, teſtified nothing that could affect the Priſoner, only that he met him on the 8th of *February*, and he ſaid he ſhould be ready to ſerve his Maſter, King *James*, to the utmoſt of his Power; and that there was an Act of Parliament on Foot, that nothing ſhould affect a Man's Life, in Treaſon, that was not proved by two Witneſſes; and therefore nothing treaſonable ought to be diſcourſed before more than one at a Time.

Then Sir *Bartholomew Shower* ſummed up the Evidence, and made his Obſervations on it for the Priſoner.

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Mr. Attorney's Obſervations on the Evidence.

Mr. Att. Gen. My Lord, I muſt beg Leave to anſwer to the Objection that the Counſel for the Priſoner have made, That there are not two Witneſſes to prove the Overt-Act laid in the Indictment, and ſo the Law is not ſatisfied. In Anſwer to that, I deſire your Lordſhip's Favour, to obſerve how the Evidence is; and then we ſhall ſee, whether there are not plainly two poſitive Witneſſes of the Overt-Act, by agreeing to aſſaſſinate the King. The firſt Witneſs is Mr. *Harris:* Your Lordſhip obſerves that Mr. *Harris* gives you an Account that Mr. *Lowick* was at Sir *George Barclay*'s Lodgings, the firſt Day it was to have been executed; and that afterwards, between the fifteenth and the twenty-ſecond, thoſe being the firſt and ſecond Days that this was to be done, when he, and *Rookwood*, and the Priſoner *Lowick*, were walking together in *Red-Lion-Fields*; and there had ſome Diſcourſe about the intended Aſſaſſination, and the Barbarity and Bloodineſs of it, and Mr. *Harris*, and Mr. *Rookwood* were averſe to it. Mr. *Lowick* ſaid, he would obey Orders; and he was ſure Sir *George Barclay* would not do it, unleſs he had direct Orders for it; that was twice repeated by him, as *Harris* ſwears: And afterwards Mr. *Harris* tells you, that the two and twentieth he dined with Mr. *Lowick*; and Mr. *Lowick* obſerved, that Mr. *Harris* came in a very great Sweat, and asked him, How it happened? He ſaid, he had been about to get ready *Rookwood*'s Party, that were to ſeize the King; for he was to have one Party: Says Mr. *Lowick* to him, You need not grudge to do it, you have ſix Shillings a Day; I have nothing, and yet I, at my own Charge, am to provide two. This is as poſitive Evidence, as well can be, of his being privy to the Deſign; and his engaging People at his own Charge, ſhews a great deal of Forwardneſs and Zeal in the Priſoner in the Buſineſs. My Lord, I think this is poſitive and plain Evidence, and not only made out by Inferences and Conſtructions, as Sir *Bartholomew Shower* ſays, but plain poſitive Proof. The firſt Day he was with ſeveral of them, and when they diſcourſed of the Thing afterwards, he declared he would obey Orders; and what could thoſe Orders be, but for what they were diſcourſing of? and nothing was diſcourſed of but this Deſign they were engaged in, and this was to juſtify the Thing, and take off the Apprehenſion of the Barbarity of it: This is *Harris*'s Teſtimony. The next Witneſs is *Bertram*, and he tells you, That the 5th of *February* the Priſoner ſent for him, and when he came to him, he asked, If he would ingage in a Buſineſs that might be for his Advantage, and ask no Queſtions? ſo at that Time, he did not acquaint him what the Thing was; but that ſhews it was a Thing that was to be kept ſecret at that Time, in regard he did not think fit to acquaint him at the firſt Inſtance. But the 14th of *February*, when he met him again, the Day before the firſt Time that it was to be put in Execution; *Bertram* ſwears he told him, that they were to ride out the next Morning, that muſt be *Lowick* and *Bertram*, for there was no Body elſe there; and that the Prince of *Orange* was to be ſeized in his Coach: Was it poſſible the Priſoner could be ignorant of it? When he ingaged him to go upon a Deſign without asking Queſtions; ſent for him the Day before, acquainted him they were to ride out the next Morning, and that the King was to be ſeized in his Coach, and bid him be ready againſt next Morning, and gave him a Guinea at that Time: The Witneſs ſays it was for Neceſſaries; but he does not pretend it was for Charity, as formerly; and that muſt be for Neceſſaries for that Purpoſe that they were then diſcourſing of; when he deſired him to be ready the next Day, and gives him Money to buy him Neceſſaries: What can that be, but Neceſſaries for what he was to be ready for? And then he did not come the next Day, and he tells you why, becauſe he thought it a very wicked and unlawful Thing, and ſo he diſappointed him; and the next Time *Lowick* chid him, and told him he would have ſerved him ſo, if the King bad been in the Field. This is plain, though I believe *Bertram* does ſpeak as tenderly as he can, being his Friend and old Acquaintance, and is willing to ſay as little as he can of him; ſo that, I believe, no body thinks but what *Bertram* ſays againſt the Priſoner is true, and what he ſwears is plain and poſitive, to ſhew that *Lowick* did engage in the Deſign: He acquainted him with it the 14th, by telling him the King was to be ſeized, and they were to ride out, and he was to be ready the next Day.

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The Chief Juſtice's Directions to the Jury.

The Chief Juſtice, in ſumming up the Evidence, obſerved, That two Witneſſes were not neceſſary to every Overt-Act; but one Witneſs to one, and another to another Overt-Act was ſufficient: That they ought not, indeed, to put any forced and violent Conſtruction upon Words in Caſes of Life: But if the Evidence was plain and clear, though the Priſoner did not ſay, in expreſs Words, he deſigned to aſſaſſinate his Majeſty; *yet if upon the whole of the Diſcourſe, that paſſed between* Bertram *and the Priſoner, it appeared plainly and ſatisfactorily to them, that he did conſent and agree to this Deſign, or was engaged in it; then* Bertram *was another Witneſs to prove him guilty beſides* Harris, *which was as much as the Law required.*

The Priſoner convicted.

Then the Jury withdrew, and after half an Hour's Receſs brought in the Priſoner GUILTY.

Lowick, Rookwood, and Cranborne condemned and executed.

After which *Cranborne* and *Rookwood* were ſet to the Bar with *Lowick*, and having nothing to offer in Arreſt of Judgment, more than they had inſiſted on before, Sentence of High-Treaſon was paſſed upon them, and they were all three executed at *Tyburn*, on *Wedneſday* the 29th of *April*, 1696, when *Lowick* and *Rookwood* left the following Papers with the Sheriffs.

Major Lowick's *Paper.*

Lowick's Paper.

" IN the Name of the moſt Holy Trinity,
" Father, Son, and Holy Ghoſt, *Amen.*
" In the firſt Place, I die in the Religion I
" was baptized, *viz. Roman* Catholick, and
" humbly beg the Prayers of all good People

" for

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" for a happy Reſurrection, and of all Ca-
" tholicks for the Good of my Soul.

" As for being engaged in this, for which
" I die, it was never ſo poſitive that I had a
" Horſe from the beginning to the very laſt,
" nor never ſee any allowed me, or the two
" Men I was to provide, as was ſworn againſt
" me at my Trial; nor had I any on that
" Account; nor was I at any of their Meet-
" ings, when they ſettled any ſuch Thing.
" And as for any Order or Commiſſion from
" King *James*; I never ſaw any ſince I came
" laſt into *England*, which is now about five
" Years; and I am confident, none that
" knows King *James* will believe he gave any
" ſuch Order.

" Indeed, I muſt confeſs, I believe King
" *James* was coming to aſſert his own
" Right; and I ſhould, if on ſhore, have
" done any thing in my Power to have aſſiſt-
" ed him; and in order to that, I ſhould have
" been very glad to have had a Horſe, but
" never had any.

" And as for being concerned in any bloody
" Affair, I never was in my Life; but have
" done my Endeavour to prevent it, as much
" as I could, on all Occaſions; and if the
" killing the moſt miſerable Creature in the
" World, or the greateſt Enemy, would now
" ſave my Life, reſtore the King, and make
" me one of the greateſt Men in *England*, I
" firſt would chuſe to die, becauſe againſt the
" Law of God.

" If any, who are now Sufferers on this
" Account, think I have been too forward,
" and a Promoter to this Deſign, I do now
" declare it was never my Inclination to do
" any raſh Thing: However I beg their Par-
" dons, and of all the World, If I have of-
" fended in Thought, Word, or any Action
" whatſoever; and do freely forgive my Ene-
" mies, and hope, through the Mercy of my
" Saviour *Jeſus Chriſt*, to have Remiſſion of
" all my Sins. Good God preſerve the
" King, Queen, Prince, and Princeſs, and
" all that Royal Blood of *Stuarts!* and may
" *England* never want one of that direct line
" to govern them, and make them once
" more happy! I have had the Honour to
" ſerve my Royal Maſter in ſeveral Commiſ-
" ſions, and the laſt as Major; and ſtrove
" ever to ſerve him to the beſt of my Power,
" and ever to be juſt to thoſe whom I had
" the Honour to command. Lord *Jeſus*, in-
" to thy Hands I commend my Spirit! O
" *Jeſus*, receive my Soul.

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ROBERT LOWICK.

Brigadier Rookwood's *Paper.*

Rookwood's *Paper.*

" HAVING committed the Juſtice
" of my Cauſe, and recommended
" my Soul to God, on whoſe Mer-
" cies, through the Merits of *Jeſus Chriſt*,
" I wholly caſt myſelf, I had once reſolved
" to die in Silence; but ſecond Thoughts of
" my Duty to others, chiefly to my true and
" liege Sovereign King *James*, moved me
" to leave this behind me.

" I do therefore, with all Truth and Sin-
" cerity, declare and avow, that I never
" knew, ſaw, or heard of any Order or
" Commiſſion from King *James* for the aſ-
" ſaſſinating the Prince of *Orange*, and at-
" tacking his Guards; but I am certainly in-
" formed, that he, the beſt of Kings, had
" often rejected Propoſals of that Nature,
" when made unto him.

" Nor do I think he knew the leaſt of the
" particular Deſign of the attacking the
" Guards at his Landing, ſo much talked of,
" in which I was engaged as a Soldier, by
" my immediate Commander, much againſt
" my Judgment; but his Soldier I was, and
" as ſuch I was to obey and Act according to
" Command.

" Theſe twelve Years I have ſerved my
" true King and Maſter, King *James*, and
" freely now lay down my Life in his Cauſe.
" I ever abhored Treachery, even to an
" Enemy. If it be a Guilt to have complied
" with what I thought, and ſtill think, to
" have been my Duty, I am Guilty: No
" other Guilt do I own.

" As I beg all to forgive me, ſo I forgive all
" from my Heart, even the Prince of *Orange*,
" who, as a Soldier, ought to have conſider-
" ed my Caſe, before he ſigned the Warrant
" for my Death: I pray God may open his
" Eyes, and render him ſenſible of the much
" Blood from all Parts, crying out againſt
" him, ſo to prevent a heavier Execution,
" hanging over his Head, than what he inflicts
" on me.

AMBROSE ROOKWOOD.

The Remarks on the Trials of the Conſpirators for the Aſſaſſination Plot, will be found at the End of Mr. Cook's *Trial.*

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Knightly's *Trial.*

The Trial of ALEXANDER KNIGHTLY, Gent. for *High-Treaſon* in the Court of *King's-Bench*, on the 30th *April*, and 20th of *May*, 1696. 8 *W.* III.

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Indicted by a wrong Name.

THIS is no more than an Arraign-
ment and Confeſſion. The Priſoner
had been indicted before, as a Con-
ſpirator in the Aſſaſſination Plot, together
with *Rookwood*, *Cranborne*, and *Lowick*, by
the Name of *Chriſtopher*; but his Name ap-
appearing to be *Alexander*, he was not tried
upon that Indictment.

Indicted a ſecond Time.

He was now arraigned on another Indict-
ment, on the 30th of *April*, by his right
Name of *Alexander*, and pleaded *Not Guilty*;
but being brought to his Trial on the 20th of
May, he retracted that Plea, and pleady
Guilty: Whereupon the Attorney-General
moved his Confeſſion might be recorded, and
that the Court would paſs Judgment on him,
but the Chief Juſtice anſwered, they could
not

Pleads guilty.

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not give Judgment then, becauſe there ought to be four Days from the Time of the Confeſſion or Verdict, to move in Arreſt of Judgment, if there be ſo many Days in the Term remaining: Indeed in *Staley*'s Caſe, who was tried for the Popiſh Plot, Judgment was given the ſame Day; but that was a Precedent that ought not to be followed; for a Priſoner ought to have four Juridicial Days to move in Arreſt of Judgment, where he is tried in the Court of *King's-Bench*; and accordingly *Knightly* was ſent back to *Newgate*, and being brought into Court again on *Monday* the 25th of *May*, being the laſt Day of the Term, Sentence was pronounced on him as a Traitor, and he was executed at *Tyburn*.

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Four Days allowed to move in Arreſt of Judgment, in the King's-Bench.

The Trial of PETER COOK, Gent. for *High-Treaſon*, at the *Old-Baily*, *London*, on the 9th and 13th of *May*, 1696. 8 *W.* III.

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Cook's Trial.

The Indictment.

THE Indictment charges the Priſoner with compaſſing the Death of the King, and adhering to his Enemies; and the Overt-Acts laid as Evidence of the ſaid Treaſons were, his meeting and conſulting with *Robert Charnock*, Sir *John Friend*, Sir *William Perkins*, and other falſe Traitors, how to raiſe a Rebellion; and ſending over the ſaid *Charnock* to *France*, to the late King *James*, to perſuade the *French* King to furniſh him with a Body of his Forces to invade the Kingdom; and that the Priſoner did buy up Horſes and Arms in order to promote the ſaid Rebellion and Invaſion.

So many of the Pannel challenged, that there was not a Jury left.

The Priſoner was brought to the Bar on *Saturday* the eighth of *May*, when he was arraigned, and pleaded Not guilty: And the Jurors being called to be ſworn, there were ſo many challenged, that there did not remain enough to try him; whereupon the Court ordered another Pannel to be ready on the *Wedneſday* following; and then adjourned to that Day.

Exception of the Counſel to the new Pannel,

anſwered by the Court,

Mr. *Cook* being brought into Court again, on *Wedneſday* the thirteenth of *May*, his Counſel objected, That the Court could not direct a new Pannel; but that they ſhould have ordered a *Tales* to ſupply the Deficiency of the firſt Pannel; and that the Priſoner ought to be tried by the firſt Pannel, according to the late Act: But the Court anſwered, A *Tales* did not lie in the Felony, upon a Commiſſion of *Oyer* and *Terminer*; and that where there was a Defect of Jurors, there was an abſolute Neceſſity for a new Pannel.

But it was admitted, That upon Appeals and Indictments removed into the *King's-Bench*, where the Proceſs for the Jury was by Writs of *Venire*, *&c.* there muſt be a *Tales* awarded, if a full Jury did not appear.

Cauſes of Challenge.

The Jurors being called to the Book, in Order to be ſworn, Mr. *Cook* deſired the Opinion of the Court, If a Juryman had ſaid he was guilty, or that he ſhould find him guilty, or that the Priſoner would be hanged, or the like; whether ſuch a one was fit to be upon the Jury? To which the Chief Juſtice anſwered, He thought it was a good Cauſe of Challenge.

Then Mr. *Walker* being called as a Juryman, Mr. *Cook* demanded, If he had not ſaid he believed him guilty?

Mr. Attorney hereupon obſerved, If he made any ſuch Objection, he muſt prove it by others, and not out of the Juryman's Mouth, becauſe it would make him guilty of a Miſdemeanor.

The Lord Chief Juſtice *Treby* ſaid, A Juryman need not anſwer any Queſtion, where the Anſwer would ſubject him to Reproach. And he thought it a ſcandalous Behaviour, if not criminal, to prejudge any one before he was tried; and this was to ask a Juryman, if he had not defamed or ſlandered him in the higheſt Degree.

Mr. Serjeant *Darnel* anſwered, Nothing was more common, when one heard a Fact reported of any one, than to ſay he thought him guilty, and he would be hanged; and there was no Crime in this: To which the Lord Chief Juſtice *Holt* replied, If upon a Report of clear Evidence, a Man ſhould ſay, *Suppoſing this to be true, ſuch a Man is guilty, and I ſhould find him ſo, if I were of his Jury:* This was not criminal, nor was it ſufficient to ſet aſide a Juror; for it imported, if the Evidence ſhould not be true and clear, he would acquit him: But for one to declare poſitively, a Priſoner was guilty, and he would find him ſo, let the Evidence be what it will; This he thought was a Miſdemeanor, and puniſhable. Another of the Judges admitted, that, in a Civil Caſe, it would be a good Cauſe of Challenge, if a Man gave his Opinion about a Right one Way or other; and ſo might be asked the Queſtion upon a *Voir dire*; but he could not be obliged to charge himſelf with what was criminal: And the Court ruling, that ſuch Queſtions ought not to be asked; the Priſoner challenged Mr. *Walker* peremptorily.

Then the Priſoner challenged ſeveral more, becauſe they had not ten Pounds *per Annum* Freehold; which the Court admitted to be a good Cauſe of Challenge: (An Act having lately paſſed, That Jurors ſhould have ten Pounds a Year Freehold.) Whereupon Mr. Attorney moved, that the Jurors might anſwer upon Oath, whether they had reſpectively ten Pounds a Year Freehold, or not; and they were examined accordingly, and a great many of them ſet aſide for Want of Freeholds of that Value; and the Priſoner objecting, That thoſe who were upon the Grand Jury, and found the Bill, could not be upon the Petit Jury. The Court admitted this alſo to be a good Cauſe of Challenge; and that the Jurors ought to anſwer, whether they had ſerved on the Grand Jury, or not: The Priſoner having challenged his full Number of thirty-five peremptorily, beſides thoſe that were

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were challenged for Cauſe, at length twelve unexceptionable Men were ſworn.

The Witneſſes examined apart.

Then Mr. *Cook* deſired that the Witneſſes might be examined apart, which the Court indulged him; but ſaid, He could not demand this of Right.

The Evidence of Porter.

Mr. *Porter* then was called, as a Witneſs for the King, and teſtified, That the Conſpirators had two Meetings laſt Year; the firſt in the Beginning of *May*, at the *King's-Head* in *Leaden-hall-Street*; where were preſent Lord *Aylesbury*, Lord *Montgomery*, Sir *John Fenwicke*, Sir *John Friend*, Sir *William Perkins*, Mr. *Charnock*, the Witneſs, and the Priſoner; and *Goodman* came in after Dinner. Here they conſulted on the beſt Way to reſtore King *James*; and it was at length agreed to ſend over Mr. *Charnock* to King *James*, to put him upon borrowing of the *French* King 10000 Men, to make a Deſcent in *England*; and to promiſe King *James*, that they would join the *French* Troops with 2000 Horſe upon their Landing: And that when Mr. *Charnock* demanded of them ſeverally, whether he might aſſure the King of this; he remembered Mr. *Cook* was kneeling upon a Chair, and anſwered, *Yes, you may.*

That Mr. *Charnock* deſiring another Meeting at Mrs. *Mountjoy*'s eight or ten Days after, moſt of the ſame Company met there again, and particularly the Priſoner; and they aſſured Captain *Charnock*, that they perſiſted in their former Reſolution: That Mr. *Charnock* afterwards came to ſee this Witneſs in *Newgate*, and told him he had been in *France:* That King *James* thanked them for the kind Offer; but the *French* King could not ſpare ſo many Men that Year: Adding, That he had communicated this Anſwer to the Lord *Aylesbury*, and the reſt of the Gentlemen that ſent him over.

Goodman's *Evidence.*

Then Mr. *Goodman* was ſworn, who depoſed, That he was at that Meeting of the Conſpirators, at the *King*'s-*Head*, mentioned by Mr. *Porter*; but did not come in till after Dinner: When they agreed to ſend over Mr. *Charnock* to King *James*, to deſire he would procure 10000 Men of the *French* King, to make a Deſcent in *England*; and to aſſure him they would join him at their Landing with 2000 Horſe at leaſt: And when Mr. *Charnock* demanded of them reſpectively, if they might aſſure King *James* this was their Reſolution: Mr. *Cook* kneeling upon a Chair, and laying his Elbows on the Table, anſwered, *Yes, you may.* That he ſaw Mr. *Charnock* after he came back; and he ſaid, He had been with the ſeveral Gentlemen that ſent him, with Compliments from King *James*; but the *French* King could not ſpare ſo many Men at that Time.

Mr. *Cook* demanding of *Goodman*, If he ever heard him ſpeak ten Words, or was ever in his Company: *Goodman* anſwered, Yes, he was in his Company, at the *Cock* in *Bow-Street*, where he came in accidentally; and that he expreſſed his Conſent at the aboveſaid Conſultation, in the Manner he had related.

Evidence to Goodman's *Credit produced by the Priſoner.*

Then the Priſoner's Counſel produced a Record; whereby it appeared, That *Goodman* was convicted of hiring one *Alexander Amadei* to poiſon the Dukes of *Grafton* and *Northumberland*; and was adjudged to pay a Fine of 1000 Pounds, and to be committed to the *Marſhalſea* till paid; to give Security for his good Behaviour during Life; and alſo Security for the Peace, and particularly towards the ſaid two noble Dukes.

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Then *Edwards* was called as a Witneſs for the Priſoner, and teſtified, That he was confined in *Newgate* with *Goodman*; and that *Goodman* told him, He and *Porter* were to be Witneſſes againſt *Cook:* That *Cook* had ſworn againſt him *(Goodman)*; but could not have his Pardon, becauſe he would diſcover no body elſe: Adding, *He or I muſt ſuffer; but it is a fooliſh Thing to be hanged: All that is ſaid of a Man, is, That he hanged handſomely, or died bravely.*

Other Evidence in Behalf of the Priſoner.

Mr. *Cock*, the Landlord of the *King's-Head*, depoſed, That about a Twelvemonth before, there dined at his Houſe, the Lord *Aylesbury*, Lord *Montgomery*, Sir *William Perkins*, Sir *John Fenwick*, Sir *John Friend*, Captain *Charnock*, Captain *Porter*, and Mr. *Cook:* That my Lord *Aylesbury* and Lord *Montgomery* went away about four o'Clock, and the reſt of the Company at eight or nine: That *Goodman* was not there, he believed, at all; for he never ſaw him till this Trial: But he could ſwear that *Goodman* was not there before the two Lords went away. And Mr. Attorney demanding, why he was not as ſure *Goodman* was not there at all, as that he was not there before the Lord *Aylesbury* went away? *Cock* anſwered, He was in the Room half a Dozen Times after Dinner, and there were no more in the Room than dined there when Lord *Aylesbury* went away.

It being demanded, if he knew the Perſons that dined at his Houſe? Or if they uſed to meet there? He anſwered, Sir *John Freind* commonly came once a Week; Mr. *Charnock* he knew, when he was a Drawer, and Sir *William Perkins*; and the reſt he knew by hearing their Names only. Being asked again, How he could be poſitive who was in the Room, when the Lord *Aylesbury* came out? *Cock* anſwered, He went up into the Room, juſt after Lord *Aylesbury* went away, and he had been there juſt before; he believed he was in the Room half a dozen times after Dinner, and there were no more than what dined there.

Crawford, one of Mr. *Cock*'s Drawers, depoſed, That he remembred that Company's dining there about a Twelvemonth before the Trial: That he did not ſee Mr. *Goodman* there at all; but was ſure he was not there till the two Lords went away, which was about four o' Clock; and the reſt of the Company ſtaid till it was dark.

Huntley, another Drawer teſtified, That he attended only on that Company: And that neither *Goodman*, or any one elſe, came into that Company after Dinner; nor had he ever ſeen *Goodman* in his Life till now: And that there were no Orders given for their being in private, but the Drawers went backwards and forwards as uſual.

Peachy teſtified, that Mr. *Cook* never abſconded, but went abroad, and received Company, after the Plot was diſcovered; and was taken in his own Room at his Father's Houſe, on a *Sunday* Morning; which Evidence was confirmed by two more: And other Witneſſes

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not give Judgment then, becauſe there ought to be four Days from the Time of the Confeſſion or Verdict, to move in Arreſt of Judgment, if there be ſo many Days in the Term remaining: Indeed in *Staley*'s Caſe, who was tried for the Popiſh Plot, Judgment was given the ſame Day; but that was a Precedent that ought not to be followed; for a Priſoner ought to have four Juridicial Days to move in Arreſt of Judgment, where he is tried in the Court of *King's-Bench*; and accordingly *Knightly* was ſent back to *Newgate*, and being brought into Court again on *Monday* the 25th of *May*, being the laſt Day of the Term, Sentence was pronounced on him as a Traitor, and he was executed at *Tyburn*.

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Four Days allowed to move in Arreſt of Judgment, in the King's-Bench.

The Trial of PETER COOK, Gent. for *High-Treaſon*, at the *Old-Baily*, *London*, on the 9th and 13th of *May*, 1696. 8 *W.* III.

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Cook's Trial.

The Indictment.

THE Indictment charges the Priſoner with compaſſing the Death of the King, and adhering to his Enemies; and the Overt-Acts laid as Evidence of the ſaid Treaſons were, his meeting and conſulting with *Robert Charnock*, Sir *John Friend*, Sir *William Perkins*, and other falſe Traitors, how to raiſe a Rebellion; and ſending over the ſaid *Charnock* to *France*, to the late King *James*, to perſuade the *French* King to furniſh him with a Body of his Forces to invade the Kingdom; and that the Priſoner did buy up Horſes and Arms in order to promote the ſaid Rebellion and Invaſion.

The Priſoner was brought to the Bar on *Saturday* the eighth of *May*, when he was arraigned, and pleaded Not guilty: And the Jurors being called to be ſworn, there were ſo many challenged, that there did not remain enough to try him; whereupon the Court ordered another Pannel to be ready on the *Wedneſday* following; and then adjourned to that Day.

So many of the Pannel challenged, that there was not a Jury left.

Mr. *Cook* being brought into Court again, on *Wedneſday* the thirteenth of *May*, his Counſel objected, That the Court could not direct a new Pannel; but that they ſhould have ordered a *Tales* to ſupply the Deficiency of the firſt Pannel; and that the Priſoner ought to be tried by the firſt Pannel, according to the late Act: But the Court anſwered, A *Tales* did not lie in the Felony, upon a Commiſſion of *Oyer* and *Terminer*; and that where there was a Defect of Jurors, there was an abſolute Neceſſity for a new Pannel.

Exception of the Counſel to the new Pannel,

anſwered by the Court,

But it was admitted, That upon Appeals and Indictments removed into the *King's-Bench*, where the Proceſs for the Jury was by Writs of *Venire*, *&c.* there muſt be a *Tales* awarded, if a full Jury did not appear.

The Jurors being called to the Book, in Order to be ſworn, Mr. *Cook* deſired the Opinion of the Court, If a Juryman had ſaid he was guilty, or that he ſhould find him guilty, or that the Priſoner would be hanged, or the like; whether ſuch a one was fit to be upon the Jury? To which the Chief Juſtice anſwered, He thought it was a good Cauſe of Challenge.

Cauſes of Challenge.

Then Mr. *Walker* being called as a Juryman, Mr. *Cook* demanded, If he had not ſaid he believed him guilty?

Mr. Attorney hereupon obſerved, If he made any ſuch Objection, he muſt prove it by others, and not out of the Juryman's Mouth, becauſe it would make him guilty of a Miſdemeanor.

The Lord Chief Juſtice *Treby* ſaid, A Juryman need not anſwer any Queſtion, where the Anſwer would ſubject him to Reproach. And he thought it a ſcandalous Behaviour, if not criminal, to prejudge any one before he was tried; and this was to ask a Juryman, if he had not defamed or ſlandered him in the higheſt Degree.

Mr. Serjeant *Darnel* anſwered, Nothing was more common, when one heard a Fact reported of any one, than to ſay he thought him guilty, and he would be hanged; and there was no Crime in this: To which the Lord Chief Juſtice *Holt* replied, If upon a Report of clear Evidence, a Man ſhould ſay, *Suppoſing this to be true, ſuch a Man is guilty, and I ſhould find him ſo, if I were of his Jury:* This was not criminal, nor was it ſufficient to ſet aſide a Juror; for it imported, if the Evidence ſhould not be true and clear, he would acquit him: But for one to declare poſitively, a Priſoner was guilty, and he would find him ſo, let the Evidence be what it will; This he thought was a Miſdemeanor, and puniſhable. Another of the Judges admitted, that, in a Civil Caſe, it would be a good Cauſe of Challenge, if a Man gave his Opinion about a Right one Way or other; and ſo might be asked the Queſtion upon a *Voir dire*; but he could not be obliged to charge himſelf with what was criminal: And the Court ruling, that ſuch Queſtions ought not to be asked; the Priſoner challenged Mr. *Walker* peremptorily.

Then the Priſoner challenged ſeveral more, becauſe they had not ten Pounds *per Annum* Freehold; which the Court admitted to be a good Cauſe of Challenge: (An Act having lately paſſed, That Jurors ſhould have ten Pounds a Year Freehold.) Whereupon Mr. Attorney moved, that the Jurors might anſwer upon Oath, whether they had reſpectively ten Pounds a Year Freehold, or not; and they were examined accordingly, and a great many of them ſet aſide for Want of Freeholds of that Value; and the Priſoner objecting, That thoſe who were upon the Grand Jury, and found the Bill, could not be upon the Petit Jury. The Court admitted this alſo to be a good Cauſe of Challenge; and that the Jurors ought to anſwer, whether they had ſerved on the Grand Jury, or not: The Priſoner having challenged his full Number of thirty-five peremptorily, beſides thoſe that

were

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were challenged for Cauſe, at length twelve unexceptionable Men were ſworn.

The Witneſſes examined apart.

Then Mr. *Cook* deſired that the Witneſſes might be examined apart, which the Court indulged him; but ſaid, He could not demand this of Right.

The Evidence of Porter.

Mr. *Porter* then was called, as a Witneſs for the King, and teſtified, That the Conſpirators had two Meetings laſt Year; the firſt in the Beginning of *May*, at the *King's-Head* in *Leaden-hall-Street*; where were preſent Lord *Aylesbury*, Lord *Montgomery*, Sir *John Fenwicke*, Sir *John Friend*, Sir *William Perkins*, Mr. *Charnock*, the Witneſs, and the Priſoner; and *Goodman* came in after Dinner. Here they conſulted on the beſt Way to reſtore King *James*; and it was at length agreed to ſend over Mr. *Charnock* to King *James*, to put him upon borrowing of the *French* King 10000 Men, to make a Deſcent in *England*; and to promiſe King *James*, that they would join the *French* Troops with 2000 Horſe upon their Landing: And that when Mr. *Charnock* demanded of them ſeverally, whether he might aſſure the King of this; he remembered Mr. *Cook* was kneeling upon a Chair, and anſwered, *Yes, you may.*

That Mr. *Charnock* deſiring another Meeting at Mrs. *Mountjoy*'s eight or ten Days after, moſt of the ſame Company met there again, and particularly the Priſoner; and they aſſured Captain *Charnock*, that they perſiſted in their former Reſolution: That Mr. *Charnock* afterwards came to ſee this Witneſs in *Newgate*, and told him he had been in *France:* That King *James* thanked them for the kind Offer; but the *French* King could not ſpare ſo many Men that Year: Adding, That he had communicated this Anſwer to the Lord *Aylesbury*, and the reſt of the Gentlemen that ſent him over.

Goodman's Evidence.

Then Mr. *Goodman* was ſworn, who depoſed, That he was at that Meeting of the Conſpirators, at the *King*'s-*Head*, mentioned by Mr. *Porter*; but did not come in till after Dinner: When they agreed to ſend over Mr. *Charnock* to King *James*, to deſire he would procure 10000 Men of the *French* King, to make a Deſcent in *England*; and to aſſure him they would join him at their Landing with 2000 Horſe at leaſt: And when Mr. *Charnock* demanded of them reſpectively, if they might aſſure King *James* this was their Reſolution: Mr. *Cook* kneeling upon a Chair, and laying his Elbows on the Table, anſwered, *Yes, you may.* That he ſaw Mr. *Charnock* after he came back; and he ſaid, He had been with the ſeveral Gentlemen that ſent him, with Compliments from King *James*; but the *French* King could not ſpare ſo many Men at that Time.

Mr. *Cook* demanding of *Goodman*, If he ever heard him ſpeak ten Words, or was ever in his Company: *Goodman* anſwered, Yes, he was in his Company, at the *Cock* in *Bow-Street*, where he came in accidentally; and that he expreſſed his Conſent at the aboveſaid Conſultation, in the Manner he had related.

Evidence to Goodman's Credit produced by the Priſoner.

Then the Priſoner's Counſel produced a Record; whereby it appeared, That *Goodman* was convicted of hiring one *Alexander Amadei* to poiſon the Dukes of *Grafton* and *Northumberland*; and was adjudged to pay a Fine of 1000 Pounds, and to be committed to the *Marſhalſea* till paid; to give Security for his good Behaviour during Life; and alſo Security for the Peace, and particularly towards the ſaid two noble Dukes.

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Then *Edwards* was called as a Witneſs for the Priſoner, and teſtified, That he was confined in *Newgate* with *Goodman*; and that *Goodman* told him, He and *Porter* were to be Witneſſes againſt *Cook:* That *Cook* had ſworn againſt him *(Goodman)*; but could not have his Pardon, becauſe he would diſcover no body elſe: Adding, *He or I muſt ſuffer; but it is a fooliſh Thing to be hanged: All that is ſaid of a Man, is, That he hanged handſomely, or died bravely.*

Other Evidence in Behalf of the Priſoner.

Mr. *Cock*, the Landlord of the *King's-Head*, depoſed, That about a Twelvemonth before, there dined at his Houſe, the Lord *Aylesbury*, Lord *Montgomery*, Sir *William Perkins*, Sir *John Fenwick*, Sir *John Friend*, Captain *Charnock*, Captain *Porter*, and Mr. *Cook:* That my Lord *Aylesbury* and Lord *Montgomery* went away about four o'Clock, and the reſt of the Company at eight or nine: That *Goodman* was not there, he believed, at all; for he never ſaw him till this Trial: But he could ſwear that *Goodman* was not there before the two Lords went away. And Mr. Attorney demanding, why he was not as ſure *Goodman* was not there at all, as that he was not there before the Lord *Aylesbury* went away? *Cock* anſwered, He was in the Room half a Dozen Times after Dinner, and there were no more in the Room than dined there when Lord *Aylesbury* went away.

It being demanded, if he knew the Perſons that dined at his Houſe? Or if they uſed to meet there? He anſwered, Sir *John Freind* commonly came once a Week; Mr. *Charnock* he knew, when he was a Drawer, and Sir *William Perkins*; and the reſt he knew by hearing their Names only. Being asked again, How he could be poſitive who was in the Room, when the Lord *Aylesbury* came out? *Cock* anſwered, He went up into the Room, juſt after Lord *Aylesbury* went away, and he had been there juſt before; he believed he was in the Room half a dozen times after Dinner, and there were no more than what dined there.

Crawford, one of Mr. *Cock*'s Drawers, depoſed, That he remembred that Company's dining there about a Twelvemonth before the Trial: That he did not ſee Mr. *Goodman* there at all; but was ſure he was not there till the two Lords went away, which was about four o' Clock; and the reſt of the Company ſtaid till it was dark.

Huntley, another Drawer teſtified, That he attended only on that Company: And that neither *Goodman*, or any one elſe, came into that Company after Dinner; nor had he ever ſeen *Goodman* in his Life till now: And that there were no Orders given for their being in private, but the Drawers went backwards and forwards as uſual.

Peachy teſtified, that Mr. *Cook* never abſconded, but went abroad, and received Company, after the Plot was diſcovered; and was taken in his own Room at his Father's Houſe, on a *Sunday* Morning; which Evidence was confirmed by two more: And other Witneſſes

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gave the Priſoner a great Character for his Piety and Virtue.

The King's Counſel endeavour to ſupport the Credit of their Witneſſes.

Then the King's Counſel called Mr. *Porter* and Mr. *De la Rue*, who teſtified, That *Edwards*, one of the Priſoner's Witneſſes, was to have been an Actor in the intended Aſſaſſination. *Goodman* alſo was called again, to confront Mr. *Cock*, the Maſter of the *King's-Head* Tavern. And teſtified, that he was introduced into that Company by Mr. *Porter:* That it was true, the Lords *Aylesbury* and *Montgomery* went away firſt; but as to what *Cock* ſaid, That he did know him *(Goodman)*, he had dined at his Houſe four or five Times with Sir *John Freind*; and one of the Days, not being well, he went down to the Bar for a little Brandy, and *Cock* gave him ſome, telling him, it was the beſt he ever taſted; and the Witneſs would have bought a Quantity of it; but *Cock* told him, he had but little of it: And he was ſure *Cock* had ſeen him five or ſix times. *Cock* however perſiſted in that Part of his Evidence, that he never ſaw *Goodman* before, and remembred nothing of the Circumſtances he mentioned.

Then it was demanded of *Porter*, If *Goodman* came into the Company at the *King's-Head* before the Lord *Aylesbury* went away? To which *Porter* anſwered, He did; and he remembred *Goodman* bowed, and took his Leave of my Lord, as he went out of Doors.

It being demanded, If he remembred the Manner of *Goodman*'s coming in? *Porter* anſwered, *Goodman* ſent up his Name; and he *(Porter)* told the Company who he was, aſſured them he was an honeſt Man, and much engaged in King *James*'s Intereſt; and then with their Conſent, he went down, and brought him up. The Court demanding, How long *Goodman* was there before the Lord *Aylesbury* went away, if it was half an Hour? *Porter* anſwered, It was near two Hours; for *Goodman* came in about four, and the Lords did not go away till near ſix; they diſcourſed the whole Buſineſs after *Goodman* came into the Room.

Then Sir *Bartholomew Shower* ſummed up the Evidence, and made his Obſervations on it for the Priſoner.

The Priſoner's Defence by Sir B. Shower.

Sir B. Shower. May it pleaſe your Lordſhip, and you Gentlemen of the Jury: I am of Counſel in this Caſe for the Priſoner at the Bar; and I muſt beg your Lordſhip's Patience, and your Favour, Gentlemen, to make a few Obſervations upon the Evidence that has been given: For we humbly inſiſt upon it in Point of Law, that here is not ſufficient Evidence before you to convict the Priſoner. You are, Gentlemen, to have Reſpect and Regard to your Conſciences, and the Oaths which you have now taken to give a Verdict, and make true Deliverance between the King and the Priſoner: You are not to go according to your own private Opinions, nor according to publick Fame, nor according to common Report, nor according to the Verdicts in other Caſes, nor according to the Confeſſions or dying Speeches of Criminals who have been executed, whether made by themſelves or by others for them, but you are to go by the Teſtimony of credible Witneſſes; and if you have not the Evidence of two credible Witneſſes before you, my Lords the Judges will inform you how the Law ſtands. That by the Statute of *Edward* VI. and the new Statute for Trials of Treaſons, there muſt be two Witneſſes to prove the Priſoner guilty of the Overt-Act of the Treaſon that is laid in the Indictment: And whether there have been two credible Witneſſes produced before you, is the Queſtion that you are to conſider, upon your Oath and Conſcience; That is, whether you are ſatisfied here be two ſuch as the Law requires. The Queſtion is not merely, whether Mr. *Cook* be guilty; but whether in your Conſciences he be legally proved guilty, whether there be Evidence to ſatisfy your Conſciences, according to the Laws of the Land, that he is guilty, and we inſiſt there is not; and therefore I beg Leave to recapitulate what has been ſworn againſt him, that we may ſee how far it reaches, and wherein it is defective.

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Gentlemen, Mr. *Porter*, he ſwears, That about the Beginning or middle of *May*, he cannot tell which, there was this Meeting, at the *Old-King's-Head* Tavern in *Leaden-hall-Street*; in which I would obſerve to you, that he confines himſelf to a certain Month; the Reaſon is very plain, and therefore I asked him, whether it was not in *April*; for if he had ſaid it had been then, there had been no Danger to the Priſoner, becauſe of the Act of Indemnity, therefore he was careful to fix it in *May*; and he would not lay it in *June*, for the tenth of *June* is a famous Day; and then, or ſoon after, *Newgate* had him; he was confined there for a Riot on that Day, and ſo they have reſtrained it to a Month, and the only Month that he is capable of ſwearing to, as to any Act done the laſt Year, till they came in *January* to the Aſſaſſination Plot, which the Priſoner is not accuſed to have had any Concern in: But it ſhould ſeem, he cannot tell what Day of the Week, or of the Month; but about the Beginning or Middle of *May*, eight Perſons dined at this Place; and then after Dinner Mr. *Goodman* came in, and they diſcourſed about this Matter.

Firſt, Gentlemen, we inſiſt upon it, That it is very improbable that *Engliſh* Proteſtants of pious Converſation, and good Morals, ſhould agree, as he ſays, to ſend ſuch a Meſſage to the late King, to invite over a *French* Popiſh Force: We may eaſily ſee the horrid and miſchievous Conſequences that would have followed ſuch a Practice, ſuch as muſt affect every *Engliſhman* with a Concern; ſo that it is improbable a Man of Virtue and Piety could engage in ſuch an Enterprize: And if it be improbable, you will never believe it, unleſs the Conviction or Proof be irreſiſtible: And if you have any other Reaſons to diſtruſt this Man's Truth, we hope you will go upon the Side of Probability; and not let popular Prejudice, common Fame, or any thing elſe, but legal and undeniable Evidence have the Aſcendant over you. If you are not ſatisfied, that Mr. *Cook* did aſſent (as from the Character of the Man, it is not probable he ſhould) to ſend *Charnock* into *France*, to perſuade King *Lewis* and King *James* to ſend 10000 Men to invade our Country, then he is not guilty.

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In the next Place, Gentlemen, he is not guilty we ſay in the Eye of the Law, if they have not two Witneſſes; and for that we ſay you have but one, or but one that is to be believed; and if you have but one that is to be believed, that in Law is but one; and conſequently my Client is not guilty: So the King's Counſel agree, that if there be but one Witneſs, he cannot be convicted; the Law is plain in the Caſe. Now to make it out that here is but one Witneſs at moſt, we have offered you ſeveral Objections, aad made them out by Evidence, againſt the Teſtimony of Mr. *Goodman*; that he is not a Perſon fit to be believed; and if he be out of the Caſe, then does Mr. *Porter*'s ſtand alone, and all will amount to one Witneſs, ſuppoſe it ſhould be granted that his Teſtimony were true.

Firſt, we have read a Record of Conviction againſt him, of a Crime one of the greateſt next unto Treaſon, that is known in our or any other Law. That he hired a Man to poiſon two Dukes, Branches of a noble Family, to which he had ſuch great Obligations, as all Mankind do know, and he himſelf cannot but acknowledge: And if there were not that Aggravation in it, of his Obligations to that Family; yet to lie in Wait to murder and poiſon, is ſuch an Offence that any Age can ſeldom ſhew the like. And the Objection is not ſo very eaſily anſwered as they would have it; nor can it be ſo ſoon paſſed over as they think, by ſaying he is a Witneſs of a Confederacy, with which the Priſoner is accuſed, a Crime greater than the Thing objected. It is true, none can bear Teſtimony in ſuch a Buſineſs, but he that is a Party: But we ſay, if theſe Perſons who come and ſet themſelves up for Witneſſes, were not *probi Homines*, and did not appear to be Perſons of indifferent Credit between Man and Man, and did not ſtand impartial in the Eye of the World in other Reſpects before; then they are not to be believed, as to what they charge themſelves and others to be guilty of. Now, if Mr. *Goodman* ſtands convicted of ſuch an Offence, as this that is alledged againſt him, though he is pardoned by the Act of Parliament, or Satisfaction acknowledged upon the Record, though it be even the very next Term, yet that does not purge him from the Infamy and Diſgrace, or from the Imputation of being concerned in ſo villainous a Deſign. It is impoſſible that he ſhould be a good Witneſs, that would be engaged in ſuch a Matter, eſpecially when we have thoſe various Witneſſes, and ſuch a concurring Teſtimony, that what he has ſworn is abſolutely falſe.

Gentlemen, If there were nothing but his own Teſtimony in this Caſe, there could be no Queſtion at all in it. And as to Captain *Porter*'s Teſtimony about his being there, we have produced three Witneſſes; who, if they be of Credit, then Mr. *Goodman* is not to be believed, but is falſified throughout: For it is not the Queſtion, Whether Mr. *Cook* went away before the Conſultation and the Reſolution? For if my Lord of *Aylesbury* or my Lord *Montgomery* went away, Mr. *Goodman* is falſified in that, and conſequently you ought not to believe him in the reſt: For he actually ſwears, That my Lord of *Aylesbury*, my Lord *Montgomery*, and theſe other Gentlemen, were all preſent, and at the Conſult; and did conſent and agree to the Reſolution, by uſing theſe Words, *Yes, you may*; *Yes, you may*. Now we ſay there are three Witneſſes that ſwear, That my Lord of *Aylesbury* was gone before he came there: I do not care whether he came there or not; that is not material: For if there were no body there, when my Lord of *Aylesbury* was there, but thoſe that were at Dinner, then Mr. *Goodman* was not there at any Conſultation, as they would inſinuate was at that Time, in that Place, in that Company.

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My Lord, we have proved to you Mr. *Cook*'s Abhorrence and Declaration, which we think ought to go a great Way in Satisfaction of his Innocence, at leaſt to induce you to the favourable Side: For, Gentlemen, you are not brought hither to convict a Man only, but to try and examine him; and it is your Duty to acquit as well as convict, according as the Evidence ſtands; it is your Duty to go according to your Conſciences, and declare whether he be guilty or not guilty, upon the Evidence you have before you; you are to examine the Truth of the Fact in all its Circumſtances, and upon your own Conſciences to declare whether he be guilty or not guilty: Now we propoſe it to you, and ſubmit it to your Conſciences, That here are three Witneſſes that ſpeak upon their Oaths, againſt whom there is no Objection, that ever they were guilty of lying in wait to poiſon any body, nor in any Plot for an Aſſaſſination, nor any Conſpiracy for inviting an Invaſion from *France*, nor any other Objection againſt them; but they ſtand upright in the Face of the World, and they three ſwear that he was not there at that Time: The Anſwer that we expect is, That he might be there, and they not ſee him; and becauſe it was poſſible he might be there, and they not ſee him, therefore that is no Evidence; but, my Lord, becauſe it may be ſo is no Evidence that it is ſo; that is no Objection; for you will take it as the Nature of the Thing will afford, and the Matter it ſelf allow: Now there can be no better Evidence than this, that they went in and out continually, the Drawers, and the Maſter of the Houſe five or ſix Times himſelf, were in the Room, and they ſay there was no ſuch Perſon there; why then it is very improbable, if not impoſſible, that any ſuch Man ſhould be there: The one ſwears he came down from my Lord of *Aylesbury* juſt before he went away; and another ſays, he followed him out of the Room; and the Maſter ſays, he met my Lord of *Aylesbury* at the Stairs-Head; all which falſifies Mr. *Goodman* in that Particular, that he was with my Lord of *Aylesbury* at the Stairs-Head, when he went away; theſe are incompatible, and if we falſify him in any one Thing, he is not to be believed in any other.

Then, Gentlemen, we offer to your Conſideration an Anſwer to another Objection: They ſay theſe Witneſſes ſeem to ſwear that he was not there at all; we are not concerned whether he was there afterwards or not; if

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if you are ſatisfied that he was not there, as our Witneſſes ſwear, while my Lord of *Aylesbury* was there, that is enough.

But then they make an Objection, How comes the Maſter of the Houſe to remember my Lord of *Aylesbury*'s going away, more than any body elſe? Gentlemen, you know the Nature of the Thing ſhews, not only that it was more probable the Maſter of the Houſe ſhould make his Obſervations near the Time of Dinner, rather than afterwards at Night, when there is more Hurry; but it is more probable he ſhould take Notice of it from the Quality of the Perſon, from the Diſcourſe he had with him about the White-Wine; which was a good Medium to refreſh a Vintner's Memory, it being a Matter in his own Trade, and that might make him call it to Mind.

Therefore, Gentlemen, we think theſe three Witneſſes ſtand free and clear in their Credit; and being ſo, are inconſiſtent with Mr. *Goodman*'s Teſtimony; and we hope, in Favour of Life, the Credit inclines on their Side, eſpecially when the Queſtion is, Whether a Man ſhall be executed for Treaſon who never fled for it, who was never charged with any Treaſon or treaſonable Practices before; nay, not ſo much as with any particular Crime or Immorality? and Whether three Witneſſes ſhall be believed, againſt whom there is no Objection, rather than two, againſt one of which there are ſuch Objections?

My Lord, we are not now debating or attacking the Evidence of the Plot, or arraigning the former Judgments againſt the Conſpirators that have ſuffered: But, Gentlemen, we are putting you now upon a ſerious Enquiry, (as God and your own Conſciences ſhall incline you), whether our Client be guilty, or not guilty upon this Evidence; that is, whether Mr. *Goodman* ſwears true or not: We hope that we have given you ſufficient Satisfaction, that upon Mr. *Goodman*'s Part the Evidence is inſufficient, and we hope you will accordingly find our Client Not guilty.

Mr. Cook's *Vindication of himſelf.*

Mr. *Cook* being afterwards permitted to ſpeak for himſelf, made the moſt ſolemn Proteſtations, That he was ever averſe to the introducing foreign Forces; that he did not ſo much as hear of the intended Invaſion, till it was common Talk; poſitively denied he ſaw *Goodman* at the *King's-Head*; declared he deſigned to receive the bleſſed Sacrament ſoon, and wiſhed he might periſh when he did it, if he ſpoke an Untruth; and if ever he bought Arms towards promoting ſuch a Deſign, he wiſhed God might ſink or ſtrike him dead; and appealed to all that knew him, if he had not the Character of a pious and virtuous Man, whoſe ſolemn Aſſeverations deſerved ſome Credit in ſuch a Caſe as this: He acknowledged, indeed, that he had never taken the Oaths, but he ſaid, he had never refuſed them, for they had not been tendered to him; however, he was now ready to take them: And he called Mr. *Hammond* to teſtify, That he heard him declare his Deteſtation of a *French* Force, and wiſh Succeſs to the *Engliſh* Fleet againſt the *French*; that when the Plot broke out, he ſpoke with Abhorrence of it; and that he never heard him ſpeak diſreſpectfully of the King or Government.

Calls a Witneſs of his Loyalty.

After which Mr. Solicitor made his Obſervations on the Evidence for the King.

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Mr. Solicitor's Reply to the Defence.

Mr. Solicitor-General. May it pleaſe your Lordſhip, and you Gentlemen of the Jury, I am of Counſel in this Caſe for the King, and I could have been very glad that this Gentleman's Defence, that he hath made, had been ſtronger than in Truth it has been; and I ſhould have been very glad too that his Counſel had been able to have made it better for him: But that he and they may be ſatisfied as much is done as the Caſe will bear; they have had all the Liberty in the World to make his Defence they could deſire, nay more than in Strictneſs could be allowed them.

Gentlemen, our Evidence is very poſitive againſt the Priſoner at the Bar, and for the higheſt Crime that the King's Subjects can be guilty of, by the Confeſſion of the Gentleman himſelf, and of his Counſel: We have, I ſay, two poſitive Witneſſes againſt him; they ſay, they are not legal ones: I muſt own, if we have not two Witneſſes, we have never a one; for whatſoever falſifies Mr. *Goodman*'s Teſtimony, falſifies whatever Mr. *Porter* has ſworn. Now the Evidence that Mr. *Porter* has given againſt him is this: He ſays there was to be a Meeting at the *King's-Head* Tavern in *Leaden-hall-ſtreet*, and there they conſulted of the Methods to bring back King *James* hither; and it was thought the beſt Way to ſend to King *James* to invite the *French* King to ſend one thouſand Horſe, one thouſand Dragoons, and eight thouſand Foot to land here, in this Kingdom, where they would meet him with two thouſand Horſe: They pitched upon a very proper Meſſenger, Mr. *Charnock*, a Perſon that has been attainted, and has ſuffered for High-Treaſon; he was to be ſent into *France* upon this Errand; Mr. *Cook*, the Priſoner at the Bar, was one of the Perſons that were there at that Time, and he was conſenting to this Meſſage; and Mr. *Porter* gives you a particular Token relating to the Priſoner, for he remembers the Priſoner did kneel upon the Chair, and leaned his Elbows upon the Table, when he conſented.

Mr. *Porter* goes further, and tells you, That Mr. *Charnock* would have another Meeting, to know and ſee whether all the Company were of the ſame Mind they had been; and that afterwards they met at Mrs. *Mountjoy*'s Houſe, and there the Priſoner at the Bar was preſent, and conſenting to the ſame Thing: Thereupon Mr. *Charnock* went into *France*, and came back again, and ſaid, The *French* King could not ſpare ſo much Force. Mr. *Goodman* gives the ſame Evidence that Mr. *Porter* had given: It is true, he was not at Mrs. *Mountjoy*'s Tavern; but he tells you withal, he ſpoke with Mr. *Charnock* when he came back from *France*, and *Charnock* returned him the ſame Anſwer that he did to Mr. *Porter*, That the *French* King could not ſpare ſo many Forces. This is the Evidence, in ſhort, Gentlemen, that is given againſt the Priſoner; and if this Evidence be true, then is he guilty of the Crime for which he is indicted.

Againſt theſe Witneſſes, they have produced, firſt, a Record of Conviction againſt Mr. *Goodman*,

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Goodman, and that was for hiring one *Amadei* to poiſon the Duke of *Grafton*, and the Duke of *Northumberland:* They have produced the Record, whereby it appears he was convicted, and fined 1000 *l.* and was to find Security for his good Behaviour during Life; and he was to lie in Priſon till the Fine was paid, and Security given: But it happens, in that very Record, it appears, there was Satisfaction acknowledged upon that, even the very next Term; and that gives a great deal of Suſpicion to believe, that the Evidence that was given was not much credited; for though the Counſel for the Priſoner has ſaid, that it was the Payment of the 1000 *l.* that was the Satisfaction; no, it is not ſo; it is a Satisfaction of the whole Judgment, for finding Security as well as the Fine. They ſay he was not able to pay the Fine; and there is nothing appears of the other Parts of the Judgment being complied with, but the whole Judgment is ſet aſide.

But all this does not make a Man *no legal* Witneſs; if they thought this Conviction tended to ſet aſide his Evidence, they would have produced it at another Part of the Trial than where they did; that is, when Mr. *Goodman* was firſt called to be ſworn as a Witneſs; then they ſhould have produced this Record, and ſaid he had been no Witneſs: But they knew well enough that That was no Exception againſt the Legality of his Evidence, but tends only to his Credit, and nothing elſe. Now, though it be a black Crime to endeavour to poiſon another, yet that does not totally deſtroy any Man's Credit; if it did, then the other Gentleman, Mr. *Porter*, has confeſſed himſelf guilty of a greater Crime than that for which Mr. *Goodman* is convicted by this Record; for he owns himſelf one that was in that Deſign of Aſſaſſinating the King: And Mr. *Goodman* owns himſelf too, guilty of a greater Crime than what is objected to him, which is that of High-Treaſon; and I hope it may be believed, when he owns himſelf guilty of High-Treaſon, which is a greater Crime than poiſoning a private Subject; or guilty of ſuch a Deſign as the Aſſaſſination of the King, which Mr. *Porter* has charged himſelf with, and notwithſtanding which, they have not offered that as an Exception againſt Mr. *Porter*'s Evidence, (for they very well know his Evidence has been received and credited); Mr. *Goodman* may be credited, though guilty of the Crime objected to him: And the conſtant Practice in all Trials of this Kind hath been, that it does not take away the Witneſs's Evidence, however it affects his Credit, which in this Caſe is ſupported by the concurrent Teſtimony of Mr. *Porter:* And ſo then, I ſay, we have two legal Witneſſes, (notwithſtanding all the Exceptions) to prove Mr. *Cook* guilty of the Crime for which he is indicted.

Then they go on further, and produce other Witneſſes: Firſt, they produce one *Edwards*, a Perſon that is committed for High-Treaſon himſelf, and under Suſpicion of his being to be one of thoſe that was to have a Hand in the Aſſaſſination; but his Evidence goes no further, than that Mr. *Goodman* told him he was to be a Witneſs againſt Mr. *Cook*, and either he, the Witneſs, or Mr. *Cook*, muſt ſuffer; and that it was a fooliſh Thing to be hanged. My Lord, there is nothing at all in this Matter that takes away Mr. *Goodman*'s Evidence: It is very plain Mr. *Goodman* had forfeited his Life, and muſt do ſomething to ſave it; and, I think, he could not do a better Service to intitle himſelf to the King's Mercy, than to diſcover thoſe that were equally guilty with himſelf. It was his Duty to have done it, if he had not been in Danger; and if he hath done no more than what was his Duty, I hope that is no Objection againſt his Teſtimony.

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They have produced likewiſe a Drawer of the *King's-Head* Tavern, one *Crawford*; and he ſays, he attended in this Room, while this Company was there: But then he goes a little further than the Counſel or the Priſoner would have had him; for they called him to prove that Mr. *Goodman* was not there when my Lord of *Aylesbury*, my Lord *Montgomery*, and Mr. *Cook* were there. But when the Drawer comes, he knows nothing of Mr. *Goodman*'s being there at all: He ſays, Mr. *Cook* was there, but not Mr. *Goodman*; and yet he does acknowledge, that Mr. *Goodman* might be there, and he not ſee him come up: He acknowledges he attended upon other Company as well as this; ſo that it is plain in the Nature of the Thing, and his own Confeſſion, that *Goodman* might be there. This cannot take off the poſitive Evidence of Mr. *Goodman* and Mr. *Porter*, who both ſwear, That *Goodman* was there.

But then they produce another Drawer, and that is one *Huntley*; and he gives the ſame Account; only indeed, he ſays, He was there all the Time they were at Dinner: But that is nothing, becauſe it is acknowledged, both by Mr. *Porter* and Mr. *Goodman*, that he was not there at Dinner-time, but he might be there after Dinner, and yet *Huntley* could not ſee him at Dinner: He tells you likewiſe, he paſſed up and down in the Room afterwards, and did not ſee Mr. *Goodman* there; but yet he might be there, and he not ſee him.

Then they produce the Maſter of the Houſe, and he gives much the ſame Evidence in Effect, which his Servants do, That he did not ſee Mr. *Goodman* there all the while; but he ſays ſomething that is a little incredible: He can be poſitive that Mr. *Goodman* was not there while my Lord of *Aylesbury* was there, but he cannot be poſitive that he was not there afterwards. He tells you, he met my Lord of *Aylesbury* and my Lord *Montgomery* upon the middle of the Stairs, coming down, and he is ſure Mr. *Goodman* was not there at that Time. Now, is that poſſible that he could be ſure of that, when he owns, (and cannot but own) that Mr. *Goodman* might go into the Room and he not ſee him? So that he has made a Strain in his Evidence that is very little to be credited, which was not deſigned ſo much for the Advantage of Mr. *Cook*, as for the Advantage of ſomebody elſe: And in itſelf it is almoſt an impoſſible Thing that it ſhould be true, by what he offers as the Reaſon of his Evidence.

But then, Gentlemen, you are to conſider, that all theſe three Witneſſes, if they ſwear

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true, do falsify not only Mr. *Goodman*, who swears that he was there, but they likewise falsify the Evidence of Mr. *Porter*; and, for that Reason I asked Mr. *Porter* the Question, Whether he did not give the same Evidence against Sir *John Freind?* And if what he swears now be not true, neither was it true when Sir *John Freind* was tried, for he was the only Witness at that Time against Sir *John Freind* for this Meeting; and therefore these Men's Testimony tends to overthrow both Witnesses as well as one: And I must tell you, that if Mr. *Goodman* be not a legal Witness, because he has sworn a Thing that is not true, then Mr. *Porter* is not a good Witness, who has sworn the same Thing, *viz.* That Mr. *Goodman* was there; and then you ought to acquit the Prisoner, because there is no Witness against him at Law; for there is the same Evidence against Mr. *Porter* that there is against Mr. *Goodman*, as to this Matter.

Then, Gentlemen, as to the Character of Mr. *Cook*, they say he is a good *English* Protestant: I hope he is so; but it is plain that Religion does not vary the Case: 'Tis within the Reach of every Man's Memory that is here, that the same Thing has fallen upon other Gentlemen that have had the same Character; particularly Sir *John Freind* and Sir *William Perkins*, who both said the same Things, in the same Place, That they were true Protestants of the Church of *England:* But that is no Manner of Evidence that will be of Weight against positive Oaths.

Now, Gentlemen, it is fit likewise you should reflect upon another Thing; What is it that should engage Mr. *Porter* and Mr. *Goodman*, or invite either of those two Gentlemen to give a false Evidence against the Prisoner at the Bar? It does not appear that there was any Injury done by him to them, to provoke them to it; so that it could be for nothing, but for the Sake of Truth.

It has been further said, in Behalf of Mr. *Cook*, That he abhorred the *French*, and any Invasion upon his Country, and the like: It is a Matter that is easily said; and it has been said by others that have been in the same Place where he now stands, That they hated all Plots, and they might punish them if ever they caught them: But these are only Sayings, and nothing else. If there can be any Constructions made of the Evidence given by these two Witnesses, that does not directly prove the Indictment, then the Prisoner ought to be acquitted: But if there can be no other Construction made, but only, That there was a plain Design to send *Charnock* into *France* to King *James*, to persuade him to prevail with the *French* King to come and invade us with a foreign Force; and if our Witnesses be legal Witnesses, (as, I doubt not, my Lords the Judges will tell you they are; if there be no Exception to the Credit of Mr. *Goodman*, but only that he was in such a Design of poisoning the two Dukes, which is really no Objection of Discredit to his Testimony), then, with Submission, I think there is no Room for you, Gentlemen of the Jury, to doubt but that the Prisoner is as guilty of this Crime laid to his Charge, as any others that have been tried and condemned for the same: And so, Gentlemen, I leave it to you.

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The Chief Justice's Directions to the Jury.

The Lord Chief Justice *Treby* afterwards summed up the Evidence, and made the following Observations upon it, in his Directions to the Jury.

Gentlemen, it ought to be considered, that here are several Circumstances, some of which seem very pregnant. It is agreed on all Hands, that the Prisoner dined there with those other seven Persons, concerning four of whom we must conclude nothing; but concerning three of them, we in this Court may take Notice, they are attainted of High-Treason; and so it is evident, that the Prisoner was for a long Time a Companion of three Traitors, and had a Conversation with them. I do not find that he had any Occasion to be there; nor any of the rest of the Company. Concerning my Lord of *Aylesbury* indeed it is said, he proposed to treat about a Hogshead of White-Wine: But that seems to be casual, and not the End of his coming, and dining with this Company there: But, be that how it will, that relates to his Lordship alone; but for the others, I do not find they do pretend any Occasion of meeting there, and therefore it leaves it the more suspicious; and it is the more so, because it was managed so privately and cautiously: They were not attended according to their Qualities: The Lords went away together in a Hackney Coach that was called, as they had come thither in another: The rest thought fit to stay there till it was dark; and, as soon as it was so, went away. There was some extraordinary Cause for all this: It did import the Prisoner to shew that it was for some good Cause and Purpose.

And further, it is observable, that this House was a Place, which, as the Master says, none of this Company did use to resort to, except Sir *John Freind*; which makes it probable, (this being a House that Sir *John Freind* frequented, and none of the others) that He bespoke this Place, and brought the rest thither: And if it were so, that makes it more probable, that there was such a Treason there to be hatched, as is evidenced by the King's Witnesses: For you may remember, and it appears by the Record in this Court, that Sir *John Freind* was indicted and attainted (not for the Assassination, but) for the Treason for which the Prisoner is now a trying; an Invasion that was to be supported with an Insurrection. Now, if Sir *John Freind* was chiefly acquainted with this House, and brought this Company together; it is very probable, it was about this Business which Sir *John Freind* was so concerned in: And that he is attainted for it, appears upon the Record before us; which should be read, but that the Prisoner's Counsel admit it, and are so far satisfied in it, that they won't arraign the Verdict; nay, they did acknowledge that there was a Plot; and there was no Doubt of it, there was such a Plot.

Now then, Gentlemen, here it is certainly proved, by these two Witnesses (and not gainsayed by the Prisoner's own Witnesses) that there was such a Meeting, and that the Prisoner was there; and they both have positively sworn that this Treason was committed there.

You

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You have heard what has been objected to their Credit; they have delivered their Teſtimony upon their Oaths; and ſo, Gentlemen are you upon your Oaths: If you are ſatisfied, and can take it upon your Conſciences, that theſe two Witneſſes are, or any one of them, is, forſworn (if ſuch Diſtinction can poſſibly be made in this Caſe) then you are to acquit the Priſoner; but if you are ſatisfied, and think they have ſworn true, you are to find him Guilty.

Mr. J. Rokeby. Nay, if one be forſworn, both are; for the Evidence is intirely in all Parts the ſame; and if Mr. *Goodman* be perjured, Mr. *Porter* is ſo too.

Sir B. Shower. Forſworn and Perjured, are hard Words: We only ſay miſtaken.

Mr. J. Rokeby. Well, that Objection goes to one as well as the other.

L. C. J. Treby. It muſt be ſo, ſince they ſpeak of the ſame joint Matter, *viz.* their being together in Company: If Mr. *Porter* ſwears true, when he ſwears that Mr. *Goodman* was there with him and the reſt, Mr. *Goodman* muſt ſwear true, when he ſwears, that he was there with Mr. *Porter* and the reſt. There was one Thing that I forgot: Sir *Bartholomew Shower* obſerved, That it might be an Invention of Captain *Porter*, becauſe he fixeth it in Point of Time to the Month of *May*, that he does not ſay it was in *April*; for that then it would be within the Pardon, which extends to *April* the twenty-ninth laſt Year: Nor would he lay it in *June*, for then he was in *Newgate*; and others of them were diſperſed, by Reaſon of a Riot committed in *Drury Lane*; and this Sir *Bartholomew Shower* alledges was a Piece of Skill and Contrivance; but really this is a Piece of Ingenuity in himſelf: For, beſides that the King's Witneſſes affirm poſitively that it was in *May*, and remember it by a certain Token, *viz.* That it was within a very few Days after the King went beyond Sea, one or two of the Priſoner's Witneſſes (*Crawford* I am ſure) did ſay, that this Meeting was this Time Twelve-Month; and you know we are now near Mid-*May*.

Then the Jury withdrew; and after a Receſs of about three Quarters of an Hour, returned with their Verdict, That the Priſoner was GUILTY: And Sentence paſſed on him as a Traitor. After which he preſented a Paper to the Court, recommending himſelf to the King's Mercy; which the Judges promiſed to lay before his Majeſty, who was pleaſed to pardon him.

Mr. Cook *convicted and condemned; but pardoned.*

Remarks on the Aſſaſſination Plot.

In theſe Trials of the Conſpirators againſt King *William*, *viz.* Of *Charnock*, *Perkins*, *Rookwood*, *Lowick*, *Cook*, &c. moſt of the Points of Law are ſettled, in Relation to Trials, which were ſo much conteſted in the preceding Reigns: And it appears that the Friends of the Faction, who were condemned for Treaſon and Rebellion in thoſe Times, had not that Injuſtice done them, as ſome of their Advocates; and particularly as Sir *Robert Atkyns* and Sir *John Hawles* complain of, in their voluminous Remarks on the Trials of the *Rye-Houſe* Conſpirators. Sir *John Hawles*, who was Solicitor-General in King *William*'s Reign, at the Trials of *Charnock*, &c. was obliged to purſue the very ſame Methods, in order to their Conviction, and inſiſt on the ſame Maxims that had prevailed in King *Charles*'s Reign; and of which he complains ſo loudly, in his Remarks on the Trials of the Lord *Ruſſel*, &c. But to deſcend to Particulars.

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Charnock inſiſted on a Copy of his Indictment, and Counſel, as his Right; but was told, he had no Right to either; and yet the Conſpirators in King *Charles*'s Reign were ſaid to have great Injuſtice done them, when theſe Things were denied them.

Charnock, alſo objected, That an Accomplice in Treaſon could not be a Witneſs (as the Conſpirators in the *Rye-Houſe* Plot had done:) But it was reſolved, an Accomplice was a good Witneſs, before he was indicted.

He objected alſo, as they had done, That Words were not Treaſon: But was told, That Words and Diſcourſe explained the Imagination of the Heart, which was the Treaſon; and that Words of Perſwaſion, in order to bring others into a Conſpiracy, were ſufficient Manifeſtations or Overt-Acts of the Treaſon of the Heart.

He objected alſo againſt Hear-ſay Evidence, as the *Rye-Houſe* Conſpirators had done; but this was however admitted on ſome Occaſions: Indeed the Jury were told, it ought not to weigh with them; but, if it was not given to influence the Jury, to what Purpoſe was it ſuffered?

Another Thing that Mr. *Charnock* deſired, was, That he might have a Perſon to ſtand by him, and aſſiſt him at his Trial: But he was told this was an Innovation, and it was refuſed him; though this was a Favour allowed to the Lord *Ruſſel* in King *Charles*'s Reign, and to ſome others.

Major *Rookwood* inſiſted at his Trial, That conſulting or conſpiring to levy War, was not Treaſon, unleſs a War was actually levied; as had been ſaid alſo in the Lord *Ruſſel*'s Caſe, and great Injuſtice ſaid to be done that Noble Lord, in being condemned for High-Treaſon, for conſpiring to attack the Guards, and levy War upon the King: But it was reſolved by the Lord Chief Juſtice *Holt* at *Rookwood*'s Trial, That the conſulting or conſpiring to levy War, in order to depoſe or impriſon the King; or to put any Force or Reſtraint upon him, was High-Treaſon, though no War was actually levied: And he added, That the contrary Opinion might have been maintained in ſome Pamphlets; but the conſulting and agreeing to levy War againſt the King, was always deemed an Overt-Act of High-Treaſon.

Another Hardſhip complained of by the *Rye-Houſe* Conſpirators, was, That Evidence was ſuffered to be given of Facts done in another County: But the Lord Chief Juſtice *Holt* reſolved in the Trial of Sir *William Perkins*, That if Treaſon was committed in ſeveral Counties, the Party might be indicted in any one of them, and Evidence given of Facts done in all of them; provided Evidence was firſt given of ſome Fact done in the County where the Indictment was laid.

It was objected further by the *Rye-Houſe* Conſpirators, as it was by Sir *William Perkins* and others at theſe Trials, That the Law required two Witneſſes to prove every Overt-

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Act: But the Chief Juſtice informed them, That if there was one Witneſs to one Overt-Act, and another Witneſs to another Overt-Act of the ſame Species of Treaſon, that was all the Law required: And that a conſpiring to raiſe a Rebellion, or promote an Invaſion, was the ſame Species of Treaſon as the conſpiring to aſſaſſinate the King; for that either of them had a Tendency to his Deſtruction.

The Act for Regulation of Trials in High-Treaſon.

There was an Act paſſed during theſe Trials, in the Year 1696, which did not only confirm many of theſe Reſolutions of the Judges, but made ſome Alteration in the Laws relating to Trials for High-Treaſon; of which it may be proper to take Notice in this Place: For Inſtance,

The Priſoner to have a Copy of the Indictment,

It was provided by this Act, That a Perſon proſecuted for High-Treaſon, or Miſpriſon of Treaſon, whereby his Blood might be corrupted, ſhould have a Copy of the whole Indictment (but not the Names of the Witneſſes) delivered to him, five Days at leaſt before his Trial; his Attorney or Agent requiring the ſame, and paying the Officer his Fees, not exceeding five Shillings for ſuch Copy.

and Counſel.

That the Priſoner ſhould be permitted to make his Defence by his Counſel, who ſhould be aſſigned him by the Court, not exceeding two; and they ſhould have Liberty to reſort to him: And that the Priſoner's Witneſſes ſhould give their Teſtimony upon Oath: That one Witneſs to one Overt-Act, and another Witneſs to another Overt-Act of the ſame Species of Treaſon, ſhould be ſufficient to convict him.

His Witneſſes ſworn.

Proſecution within three Years.

But the Proſecution is limited to be within three Years after the Treaſon committed.

A Copy of the Pannel.

The Overt-Act muſt be laid in the Indictment.

It is provided alſo by the ſaid Act, That the Priſoner ſhall have a Copy of the Pannel of the Jurors, duly returned and delivered to him two Days at leaſt before the Trial: And that he ſhould have the Proceſs of the Court to bring in his Witneſſes: And that no Evidence ſhould be given of any Overt-Act not laid in the Indictment.

It was alſo enacted, That no Indictment for the Offences aforeſaid ſhould be quaſhed on Motion for miſwriting, mis-ſpelling, falſe or improper *Latin*; unleſs ſuch Exception be made in Court, before any Evidence given: And that no ſuch miſwriting, mis-ſpelling, falſe or improper *Latin*, after Conviction, ſhould be deemed a Cauſe to ſtay or arreſt Judgment: But Judgment may be reverſed upon a Writ of Error in the ſame Manner (and no other,) as if this Act had not been made.

All the Peers ſummoned on the Trial of a Peer.

And, it was further enacted, That upon the Trial of any Peer or Peereſs, for Treaſon, or Miſpriſon of Treaſon, all the Peers ſhould be duly ſummoned, twenty Days at leaſt before the Trial; and every Peer ſo ſummoned and appearing, ſhould have a Voice at ſuch Trial, firſt taking the Oaths, and repeating and ſubſcribing the Declaration againſt Tranſubſtantiation; provided that the ſaid Act ſhould not extend to Impeachments, or to the Treaſons for counterfeiting the Coin or Seals.

Jurors to have 10 l. per Annum.

And it was provided by an Act made in the 4th and 5th of *W. & M. cap.* 24. That Jurors ſhould have ten Pounds *per Annum* (for life at leaſt) within the County, or it ſhould be a good Cauſe of Challenge; and the Juror might be examined, as to that Point, upon Oath.

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The firſt Trial after that Act.

The firſt Trial after the Commencement of the ſaid Act, for regulating Trials in Caſes of High-Treaſon, was that of *Ambroſe Rookwood*, above-mentioned; at which Trial his Counſel obſerved, that by the Words of the ſaid Act, the Priſoner ought to have had a Copy of the Pannel of the Jurors *duly returned* two Days before the Trial; but the Court reſolved, That it anſwered the Intent of the Act, if the Priſoner had a Copy of the Pannel arrayed, *though not returned*, at the Time it was given the Priſoner.

Mr. *Rookwood*'s Counſel alſo moved, that they might offer their Exceptions to the Indictment *Plea after pleaded, and the Jury ſworn*; for that Act ſaid, they might offer their Exceptions to the Indictment *before Evidence given*.

But the Court ruled, *That they ought to have moved this upon the Arraignment, before Plea pleaded, notwithſtanding the Words of the Act*; That the Act intended they ſhould move at ſuch Time before Evidence given, as the Law allowed, and did not eſtabliſh any new Method of Trial.

In what Caſe a Felon pardoned may be a Witneſs.

It was reſolved alſo at this Trial, that one *convicted* of Felony, and pardoned, might be a Witneſs: but one that had been *attainted* of Felony, and pardoned, could not.

The Effect of a Pardon.

That a Pardon from the King was as beneficial as a Parliament Pardon; and a Parliament Pardon would not reſtore an Offender to Blood, unleſs the Attainder was reverſed, or there were ſpecial Words in the Act to reſtore him; and whereas that Act ſays, that no Evidence ſhall be given of any Overt-Act not laid in the Indictment; yet the Court held, That any Fact might be given in Evidence (though not laid in the Indictment) that tended to prove an Overt-Act, that was laid in the Indictment.

An Overt-Act not laid may be given in Evidence, to prove an Act that is laid.

A Priſoner not to be tried in Irons.

The Chief Juſtice, 'tis obſerved at the Trial of *Cranborne*, declared, That a Priſoner ought not to be in Irons at his Trial, and ordered them to be knocked off; giving this Reaſon for it, That he ought to ſtand at Eaſe, that he might be the better enabled to make his Defence: But if this Reaſon be a good one it ſhould hold equally where a Priſoner is brought to his Arraignment; becauſe then he is to make his Exceptions to the Indictment, which is a conſiderable Part of his Defence, and often takes up a great deal of Time: And yet we find this Privilege was denied Mr. *Layer* at his Arraignment.

Cauſes of Challenge.

It was alſo ruled at this Trial, That it was no good Cauſe of Challenge to a Juror, that he had given a Verdict againſt another Priſoner on the ſame Indictment; but it was held to be a good Cauſe of Challenge if he had been upon the Grand Jury, or if he had declared the Priſoner was guilty before hand. It was alſo reſolved, That a Juryman was not bound to anſwer whether he had given ſuch an Opinion or not; but this muſt be proved by Witneſſes, as muſt every Thing elſe, where the Juror's Anſwer would ſubject him to any Reproach or Damage.

Jurors.

And

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And it was reſolved at *Lowick*'s Trial, That if any one Overt-Act laid in the Indictment was proved, that was ſufficient to maintain it; the Indictment could not be quaſhed for any Defect or Uncertainty in the other Overt-Acts that were laid: And in *Knightley*'s Caſe, the Chief Juſtice declared, That where a Trial is in the *King's-Bench*, a *Venire facias* ought to iſſue for the Jury as in Civil Caſes; and there muſt be fifteen Days between the *Teſte* and the Return; and that there ought to be four Days after Conviction in that Court, if there be ſo many Days remaining in the Term, before Judgment be pronounced: And yet we find in *Stayley*'s Caſe who was condemned for the Popiſh Plot, Judgment was given the ſame Day: So furiouſly did the Faction drive on that Proſecution!

One Overt-Act proved maintains the Indictment.

Trials in the King's-Bench.

Stayley not fairly dealt with.

It appears alſo, from Mr. *Cook*'s Trial, That a Jury cannot by Law be diſcharged, after they are once charged with a Priſoner, till they have given a Verdict, and that the Priſoner ought to be convicted or diſcharged thereupon: And yet we find in the Trial of the two Jeſuits, *White-bread* and *Fenwicke*, after the Jury were charged with them, and the Evidence actually given, the Jury were diſcharged of them, and they were afterwards indicted, convicted, and condemned for the ſame Offence, and conſequently they were illegally put to Death, if the Opinion of the Court at Mr. *Cook*'s Trial be Law: But every thing was eſteemed fair by the Faction in thoſe Days, eſpecially in the Proſecution of Prieſts and Jeſuits.

A Jury cannot be diſcharged before Verdict.

The Injuſtice done ſome Jeſuits in the Trials for the Popiſh Plot.

There being a Defect of Jurors at Mr. *Cook*'s Arraignment, occaſioned by the numerous Challenges, as well on the Part of the King as of the Priſoner, the Court ordered another Pannel to be ready on the *Wedneſday* following; when the Priſoner being brought to the Bar again, his Counſel inſiſted, that there ought not to have been a new Pannel awarded, but a *Tales*; for, by the late Act, the Priſoner was to be tried by the firſt Pannel: But the Court was of Opinion, a *Tales* did not lie upon a Commiſſion of *Oyer* and *Terminer*; but where there was a Defect of Jurors, there was an abſolute Neceſſity for a new Pannel.

No Tales on a Commiſſion of Oyer *and* Terminer.

Having taken Notice of the principal Points of Law reſolved in theſe Trials, and made ſome Obſervations on them, I proceed, in the next Place, to make ſome Hiſtorical Remarks on this Conſpiracy.

Hiſtorical Remarks.

The *French* King had in a Manner ruined and depopulated his Country, by maintaining a long and expenſive War againſt moſt of the Powers of *Europe*, in Behalf of his Ally King *James*; by whoſe Reſtoration he propoſed the bringing over *England* to his Party, and to make this Kingdom ſubſervient to his grand Deſign of Univerſal Monarchy: As a laſt Effort therefore, when he found but little Impreſſion could be made on the Confederates in *Flanders*, he projected the making ſo ſudden a Deſcent upon the *Engliſh* Coaſt, when moſt of our Troops were on the other Side the Water, as to bring about another Revolution, by the Aſſiſtance of the Malcontents here, before any Proviſion could be made to oppoſe him; and, accordingly, in the Winter of the Year 1695, he drew down an Army towards *Dunkirk* and *Calais*, with the utmoſt Secrecy, and King *James* came to *Calais*, attended by Marſhal *Boufflers*, in order to embark for *England*; the Duke of *Berwick*, and Sir *George Barclay* being ſent over before, with ſome reformed Officers, to prepare King *James*'s Friends in *England* to join him when he ſhould land: And, in order to facilitate the Enterprize, ſome deſperate Men, without the Knowledge of King *James*, or indeed of many conſiderable Men of their Party, reſolved to attack King *William*'s Guards as he came from Hunting, to take him Priſoner, and hurry him into *France*, and had actually treated for a Ship for that Purpoſe; and there were others, it is ſaid, that had determined to kill him, if they could not carry him off: From whence this Conſpiracy obtained the Name of *The Aſſaſſination Plot*; though it appears from theſe Trials, that this Branch of it was not known to ſeveral of the Conſpirators, nor were they ſo much as charged with it; and every one of the Priſoners, at their reſpective Executions, declared with their dying Breath, That King *James* had given them no Orders or Authority to kill King *William*; the Commiſſion, which ſome of them ſaid they had heard of, being only a general Commiſſion to make War on the Prince of *Orange*; which they imagined, perhaps, would have excuſed them from the Guilt of Treaſon, if they had joined King *James* and the *French* Troops on their Landing.

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Biſhop *Burnet*, indeed, ſpeaking of the Aſſaſſination Plot, in his poſthumous Hiſtory, Vol. II. Pag. 172, *&c.* ſays, That King *James* gave the Conſpirators a Commiſſion to attack the Prince of *Orange*'s Perſon; but it does not appear certainly, from the Trials of the Conſpirators, that they had any Commiſſion at all; ſome of the Witneſſes, and particularly *De la Rue*, teſtifying, that they once reſolved to act without a Commiſſion; and *Porter*, who teſtifies he heard that there was a Commiſſion, only ſays, That it was *to make War upon the Prince of* Orange; which is very far from being a Commiſſion *to attack King* William's *Perſon in particular*, or, in other Terms, to *aſſaſſinate* him. Had King *James* and the *French* Forces landed, and joined the *Engliſh* Malcontents, who would have acted, it is preſumed, under Generals commiſſioned by King *James*, they would, no doubt, have looked upon themſelves to have been authorized to attack King *William*'s Guards, or any other Part of his Forces; and King *William*'s Generals probably were authorized to attack King *James*'s Guards, or any other Part of his Forces, whether commanded by that King in Perſon or not: The Commiſſions on both Sides poſſibly were much of the ſame Tenor, and the like Inferences might be drawn from each.

'Tis true King *William* might have been killed in this War, and ſo might King *James*; here were no Orders given, that ever I heard of, on either Side, to avoid firing, where either King was perſonally preſent: And, if we may credit Biſhop *Burnet*, Queen *Mary* was in the utmoſt

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utmoſt Conſternation, after the Battel of the *Boyne*, till ſhe heard her Father was ſafe; though it cannot be ſuppoſed any particular Orders were given to take him off.

Give me leave to take Notice of another groſs Miſtake of Biſhop *Burnet*'s, in Relation to theſe Trials, *Pag.* 188, and 193 of his laſt Volume of poſthumus Hiſtory; where he ſays, *That the Priſoners did not, either at their Trials or Examinations, deny any Circumſtance in the Evidence againſt them*; whereas every Man of them denied that their Meeting at the *King's-Head* was with an Intention of ſending *Charnock* to *France*, to procure a Body of *French* Troops, as had been ſworn; but averred that nothing of this kind was mentioned at that Meeting; and Sir *John Fenwick*'s Words, at his Execution, are very particular, *(viz.)*

As for what I am now to die, I call God to Witneſs, I went not to that Meeting in Leaden-hall-Street *with any ſuch Intention, as to invite King* James *to invade this Kingdom by Force; nor was I myſelf provided either with Horſe or Arms, or engaged for any Number of Men, or gave particular Conſent for ſuch Invaſion, as it is moſt falſly ſworn againſt me.*

Nor was the diſpatching *Charnock* into *France* for a Body of Troops, at that Meeting, denied only, by every one of the Priſoners at their Execution, but there is a noble Lord ſtill living, who was one of that Company, who abſolutely denies, to this Day, that there was any ſuch Matter treated of, or mentioned, at the Meeting at the *King's-Head*; but ſays, that *Charnock*, deſiring to ſerve the late King *James* in *France*, prevailed on him, and the reſt of the Company, to meet there, in order to get a Recommendation to the Lord *Montgomery*'s Father, who was then Chamberlain to King *James*: That there was no Diſcourſe at that Meeting, of inviting over *French* Forces, or encouraging the raiſing Forces to join them at their Landing, as *Porter* and *Goodman* had teſtified: That the Aſſaſſination was a Reſolution taken by *Charnock*, *Porter*, and ſome deſperate Men, who communicated it only to thoſe few who were to be Actors in it: and that neither at this Time, or any other, did King *James* give Encouragement to ſuch a barbarous Attempt on King *William*, or was ever privy to ſuch a Conſpiracy; and that Biſhop *Burnet*'s Account of the Aſſaſſination Plot is not to be relied on. This the Author of theſe Sheets has ſeen, in a Letter under the Hand of that noble Lord to one of his Friends, and can aſſure the Reader that it was written at ſuch a Time and Place, that his Lordſhip could be under no Neceſſity or Temptation of diſguiſing the Truth. But to proceed: The Nation never appeared in a greater Ferment and Conſternation than on the Diſcovery of this Plot: The three Perſons who diſcovered it, and were made Witneſſes againſt the Conſpirators afterwards, namely, *Pendergraſs*, *De la Rue*, and *Porter*, had no ſooner given Advice of it to the Court, but King *William* went to the Houſe, *(viz.* on the 24th of *February*, 1695-6.*)* and acquainted his Parliament, that he had received ſeveral concurring Informations of a Deſign to aſſaſſinate him, and invade the Kingdom at the ſame Time; and that he had therefore given Orders for equipping a Fleet, and for bringing over ſuch a Body of Forces from *Flanders* as might ſecure them againſt any Attempts from abroad; that ſeveral of the Conſpirators were already in Cuſtody, and Care was taken to apprehend the reſt; and he did not doubt the Zeal of his Parliament to do every Thing that was proper for their common Safety.

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Both Houſes hereupon attended his Majeſty the ſame Day with an Addreſs, congratulating him on his Preſervation, and declaring their Abhorrence of the barbarous Deſign; aſſuring him they would ſupport his Perſon and Government againſt the late King *James*, and all his Enemies; and in Caſe his Majeſty came to a violent Death they would revenge it; deſiring he would proceed to ſeize and ſecure ſuch Perſons as he ſaw fit: And the next three Days the Members of both Houſes were employed in taking and ſigning a voluntary Aſſociation, which they entered into, wherein they declared King *William* their rightful and lawful King, and mutually engaged to ſtand by each other, in his Defence, againſt King *James* and his Adherents; and in Caſe his Majeſty ſhould come to a violent Death, they obliged themſelves to unite and aſſociate in revenging it upon his Enemies, and in ſupporting the Succeſſion of the Crown, according to the Act of Settlement: And a Proclamation iſſued for apprehending the Duke of *Berwicke*, Sir *George Barclay*, Major *Lowick*, Captain *Courtney*, *George Higgons*, *George Porter*, *Cardel Goodman*, and ſeveral other ſuſpected Perſons, (the Earl of *Aylesbury* having been apprehended and committed to the *Tower* before).

A Fleet of fifty Men of War alſo was equipped in a few Days, and ſent, under the Command of Admiral *Ruſſel*, to lie before *Dunkirk* and *Calais*; and twenty Battalions were at the ſame Time brought over from *Flanders*, under the Command of the Duke of *Wirtemburgh*: So that the late King *James*, on his Arrival at *Calais*, found the deſigned Enterprize entirely defeated, and thereupon returned to *St. Germains*, leaving his Friends in *England* at the Mercy of his Rival; and they were thereupon condemned and executed, in the Manner above related.

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Fenwick's *Attainder.*

Proceedings againſt Sir JOHN FENWICK, on a Bill to attaint him of *High-Treaſon*; which was debated in the Houſe of Lords and Commons, in the Months of *November* and *December*, 1696, and received the Royal Aſſent on the 11th of *January* following.

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SIR *John Fenwick* lay concealed in *London*, from the Time of the Diſcovery of the Aſſaſſination Plot, till the Beginning of *June* 1696; when endeavouring to make his Eſcape over to *France*, he was apprehended at *Romney*, on the Coaſt of *Kent*, before he could embark: And being in Cuſtody at *Romney*, wrote a Letter to his Lady; which was intercepted,

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cepted, and great Uſe made of it in the ſubſequent Proceedings againſt him; being of the following Tenor.

His Letter to his Lady after he was taken.

" What I fear'd is at laſt happened. Had " I gone alone, I had done it: But the other " was betrayed from *London*. It is God's " Will, ſo we muſt ſubmit. I know nothing " can ſave my Life, but my Lord *Carliſle*'s " going over to him, backed by the reſt of " the Family of the *Howards*, to beg it; and " offering, that I will be Abroad all his Time, " where I cannot hurt him; and that I will " never draw Sword againſt him. I muſt " leave it to you what elſe to ſay: All Friends " muſt be made: My Lord *Devonſhire* may " perhaps, by my Lady: My Lord *Godolphin* and Lord *Pembroke*, by my Lady *Montgomery*; Mr. *Nelſon*, by the Biſhop of *Canterbury*; My Lord *Arran* might engage his " Brother *Selkirk*, to uſe his Intereſt with " *Keppel*. I believe, if my Lord *Carliſle* " would go, it were beſt before my Trial; " or elſe they will cut me ſhort, for Want of " Time: If he can prevail with him for a " pardon, he will procure it as well before " my Trial as after; at leaſt, he may prevail " for a Reprieve, till ſome come over to " him: My Lord alſo will have an Opportunity to engage *Bentinck*; and get my Lord " of *Eſſex* to join with him. I cannot think " what elſe to ſay, but the great Care muſt " be the Jury: If two or three could be got " that would ſtarve the reſt, that or nothing " can ſave me: Money I know would do it; " but alas! that is not to be had; nor ſhall " I get enough for Counſel. I beg of you not " to think of being ſhut up with me, I know " it will kill you; and beſides, I have no " ſuch Friend as you to take care of my Buſineſs; though it would be the Comfort of " my Life, the little Time it laſts, to have " you with me; and I have this only Comfort now left, that my Death will make " you eaſy. My deareſt Life, grieve not for " me, but reſign me to God's Will: You " will hear, as ſoon as they bring me to " Town, where they put me; and then I " would have a Servant, or ſome body, with " me. I am interrupted, ſo can ſay no more " now: Engage Sir *John Lowther*, the new " Lord, who has more Intereſt than any " body: Let my Lord *Scarſdale* engage *Germaine*, to engage *Overkirk* for me: Speak " to my Lady *Arlington*. If my Trial could " be put off till the King comes back, there " would be more Opportunity to ſollicit " him."

As Sir *John Fenwick*'s principal Hopes ſeemed to lie in getting his Trial put off till the King came over; and great Promiſes of Favour were made him, if he would diſcover the Noblemen and Gentlemen which were ſuſpected to be concerned with him. Sir *John* amuſed the Miniſtry from Time to Time, with one plauſible Story or other; and, at length, delivered in a Paper; wherein he charged the Duke of *Shrewſbury*, the Earl of *Marlborough*, the Earl of *Bath*, Admiral *Ruſſel*, the Lord *Godolphin*, and Commiſſary *Crawford*, of holding a Correſpondence with King *James*: Which the Lords Juſtices giving little Credit to, they cauſed Sir *John* to be indicted on the Evidence of *Porter* and *Goodman*; and the Indictment was found by a *Middleſex* Jury: But *Goodman* being tampered with, as was ſuppoſed, by ſome great Men, who were ſuſpected to be in the Plot, made his Eſcape into *France*, before Sir *John* was brought to his Trial; and there being now but one Witneſs againſt him, they did not think fit to bring him upon his Trial afterwards; but deferred the Proſecution of him till his Majeſty ſhould come over from *Flanders*, when they propoſed to lay the Caſe before the Parliament.

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King *William* returning to *England* on the ſixth of *October*, and the Parliament meeting on the 20th of the ſame Month; Admiral *Ruſſel*, who was one of the Perſons accuſed by Sir *John Fenwick*, prevailed on Mr. Secretary *Trumbal* to bring the ſeveral Papers, containing the Informations Sir *John* had given to the Lords Juſtices, into the Houſe of Commons, on the ſixth of *November*; and moved that they might be read, that he might have an Opportunity of juſtifying himſelf; Mr. Secretary declaring at the ſame Time, that he had his Majeſty's Leave to lay thoſe Papers before the Houſe. Then the Papers were read, and Sir *John Fenwick* was brought before them, by an Order of the Houſe, that Afternoon; when Mr. Speaker required him to make a full Diſcovery of what he knew of the Conſpiracy: To which Sir *John* anſwered, He was indicted of High-Treaſon, and a Diſcovery there might be prejudicial to him, unleſs he had ſome Security to indemnify him, and then he ſhould be ready to tell all he knew: But was anſwered, the beſt Way to obtain their Favour, was, to make a free and candid Confeſſion. Then he deſired only ſome Time to recollect himſelf; but this alſo was refuſed; and Sir *John* being withdrawn, it was reſolved, after ſome Debate, to attaint him of High-Treaſon; *Yeas* 179, *Noes* 61: And on *Monday* the ninth of *November*, a Bill was brought for attainting Sir *John Fenwick* of High-Treaſon; and it was read a firſt Time, and the Queſtion put for a ſecond reading; upon which the Houſe divided; *Yeas* 196, *Noes* 102; and *Friday* was appointed for the ſecond reading: And that Sir *John* ſhould have a Copy of the Bill, and of the Order, and be allowed Pen, Ink, and Paper; and that Mr. Attorney and Mr. Sollicitor ſhould be ready to produce the Evidence againſt him that Day.

Sir John *brought before the Commons.*

A Bill of Attainder brought in againſt him, and read.

In the mean Time Mr. Speaker read a Letter from Mr. *Fuller*, the Forger of the Warming-Pan Plot, offering to become an Evidence againſt Sir *John*; but the Houſe knowing him to be ſo notorious an Impoſtor, rejected his Teſtimony: Mr. *Speaker* alſo acquainted the Houſe, that he had read a Letter from Sir *John Fenwick*, deſiring, That Sir *Francis Pemberton*, Sir *Thomas Powis*, and Sir *Bartholomew Shower*, might be his Counſel, and Mr. *Dighton* his Sollicitor: Whereupon it was ordered he ſhould be allowed two Counſel and the Sollicitor he deſired; and that he ſhould be heard by his Counſel.

Fuller *offers to be an Evidence againſt Sir* John.

Accordingly Sir *John* being brought to the Houſe again, on *Friday* the 13th of *November*,

A Debate about the Form of Proceeding.

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ber, before he was brought in, a Debate aroſe, Whether the Mace ought to lie upon the Table, or whether the Serjeant ought to ſtand by him with it at the Bar? For there was not a Member in the Houſe that had been preſent at the hearing a Priſoner againſt a Bill of Attainder.

Some Gentlemen held, That Sir *John Fenwick* being a Priſoner, the Mace ought to be at the Bar, and then no Member could ſpeak: Others ſaid it ought to lie upon the Table, and then every Member was at Liberty to ſpeak, and ask Queſtions: A third was of Opinion, the Sheriffs of *London* could not have him in Cuſtody here; but he muſt be delivered to their Serjeant: To which it was replied, He might be in the Cuſtody of the Serjeant without his Mace; and another ſaid, The Mace ought to lie upon the Table: For never any Bill was read, but when the Mace was on the Table.

Others obſerved, That when the Lord *Torrington* was brought Priſoner from the *Tower*; and the Houſe, upon Account of his Quality, did not order him to the Bar; the Mace was upon the Table, while he was in the Houſe; and he gave an Account of his Conduct, and every Member was at Liberty to ask him what Queſtion he pleaſed: And another Member ſaid, If the Mace was not upon the Table, their Mouths were muzzled: They were not in the Nature of Judges; and ſhould they paſs a Vote, That the Judges ſhould ask no Queſtions? Would they act in their higheſt Capacity without being a Houſe? Adding, That when the Duke of *Leeds* appeared there, the Mace was upon the Table.

To this it was anſwered, That though when the Mace was carried from the Table, no Member had the Liberty to ſpeak; yet any Member had the Liberty to deſire, that the Counſel and the Priſoner withdraw; and then the Mace might be brought to the Table.

At length, the Queſtion being put, it paſſed, That the Mace ſhould ſtand by Sir *John Fenwick* at the Bar.

It was reſolved alſo, That the Bill ſhould be read to Sir *John* in the Houſe, though the Mace was off the Table: But then that it ſhould be read again after Sir *John* was withdrawn, when the Mace was upon the Table before the Queſtion was put.

Then Sir *John Fenwick* was brought in, and the Serjeant took him to the Bar; where he ſtood by him with his Mace: And Sir *Thomas Powis* and Sir *Bartholomew Shower*, were admitted as Counſel for Sir *John*; and Mr. Serjeant *Gould*, and Mr. Recorder *Lovel*, appeared as Counſel for the Bill.

The Counſel on both Sides.

Mr. Speaker then acquainted Sir *John*, That the Houſe had ordered a Bill to be brought in, to attaint him of High-Treaſon; which had been once read; and to which they permitted him to make his Defence by his Counſel, before it was read a ſecond Time: But they muſt not permit his Counſel to diſpute the Power of Parliaments to paſs Bills of Attainder, whenever they ſaw fit: After which the Bill was read, being of the following Tenor:

The Bill read to Sir John.

That whereas Sir *John Fenwick*, Bart. had been indicted for High-Treaſon, on the Oaths of *George Porter* and *Cardel Goodman*, for compaſſing the King's Death, and adhering to his Enemies: And whereas the ſaid Sir *John* had procured his Trial to be put off from Time to Time, on Pretence of making a full Diſcovery of the Conſpiracy againſt his Majeſty; and, inſtead thereof, had contrived ſeveral falſe and ſcandalous Accuſations; reflecting on ſome Peers and Members of the Commons, with an Intent to undermine the Government, and create Jealouſies between the King and his Subjects: And whereas the ſaid *Cardel Goodman*, one of the Witneſſes againſt the ſaid Sir *John*, was in the mean Time withdrawn, ſo that his Evidence could not now be had: It was therefore enacted, That the ſaid Sir *John Fenwick* ſhould be convicted and attainted of High-Treaſon.

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After the reading the Bill, Mr. Serjeant Gould *opened the Charge and the Evidence; and ſaid,*

Mr. Serjeant Gould opens the Charge and the Evidence.

Mr. Speaker, We are here, in Obedience to your Commands, to give an Account of the Charge, and likewiſe the Evidence of the Fact, that is againſt this Gentleman, Sir *John Fenwick*. The Charge againſt Sir *John Fenwick* is for High-Treaſon, and High-Treaſon of the higheſt Degree; it is no leſs than a Deſign of depoſing the King, and ſubverting the Government, and ſubjecting it to a *French* arbitrary and ſlaviſh Power: It further charges, That in Proſecution of this Conſpiracy, he hath met together with ſeveral others, that have conſulted, conſented, and agreed together, to bring in a *French* Army upon us; and, in order to that, as a particular Overt-Act, it is charged, That they contrived to ſend one to the late King *James*, to bring in a *French* Power upon us: It is charged likewiſe, That he conſpired to levy War upon us; and, for that Purpoſe, did provide Piſtols, and other warlike Arms. This I take to be the Subſtance of the Charge, as laid in the Indictment.

Now, may it pleaſe you, Mr. Speaker, as for the Evidence of the Fact, charged and alledged in the Indictment, it is no Secret certainly to any at this Time of Day (after ſo many Trials, ſo many Convictions, ſo many Attainders), that for ſome Years laſt paſt, there hath been a wicked Conſpiracy to bring in a *French* Power upon us, to ſubject this good Government, and to depoſe the King; but God Almighty, by ſpecial Providence, hath always prevented and diſappointed them. We know, ever ſince the Buſineſs of *la Hogue* (in which, even by a Miracle, God diſappointed them), they have been ſtill reſtleſs, and have been induſtrious to ſet up again this Deſign; and for this have plotted to bring in a *French* Power, and have not had any Regard to the King's Mercy ſhewed to them, and that in paſſing ſeveral Acts of Parliament but have ſtill perſiſted in the ſame Deſigns.

As to the Charge upon this Gentleman at the Bar, we ſhall ſhew that in Time. In the Year 1694, for ſeveral Months there was a Conſpiracy carried on, but did not take Effect: Afterwards in Time, I think the Beginning of *June*, or the latter End of *May*, there

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there were ſeveral Conſults, or Meetings, at the *King's-Head* Tavern, at the upper End of *Leaden-hall-ſtreet*; where this Gentleman, that now ſtands charged at the Bar, was preſent: There were ſeveral Gentlemen, and, among the reſt, (as it hath and will appear upon the Evidence), there was Sir *John Fenwick*, my Lord *Montgomery*, and ſeveral others; whereof Captain *Porter* and *Goodman* were there likewiſe preſent: It was then propoſed, that one *Charnock* (ſince executed, and agreed upon by all to be preſent), ſhould go over into *France* to the late King *James*, to communicate to him their Reſolution and Sincerity in being ſerviceable to him in levying War here, to depoſe the King, and ſubvert the Government; who was to intercede with the *French* King, ſo that there might beForces ſent from *France*. But after this, *Charnock* (preſent ſtill this Gentleman) comes and propoſes this Thing again, and tried whether they were ſincere and real in their former Reſolutions: To which they all replied, and did agree and aſſent, That it ſhould be done; and they were very zealous in the Matter, and the Forces were at that Time propoſed. And what was that? Why truly, no leſs than 8000 Foot, and 2000 Dragoons of *French*, with an Aſſurance of 2000 Horſe from this Country. *Charnock* did go into *France*, and did communicate this Matter; and, after he had communicated this Matter, he came back, and brought Anſwer; That King *James* had endeavoured to anſwer their Expectations, but at that Time the *French* King could not ſpare his Forces; but however, returned hisThanks to them.

This paſſed on till towards *Chriſtmas* laſt: Then comes over Sir *George Barclay* upon this Expedition, and there was a Commiſſion prepared for that Purpoſe: And as to one Part, he brought along with him a Detachment of ſome of King *James*'s Guards, who was to aſſaſſinate the King: The next Part was for raiſing a Rebellion; now that fell to Sir *John Fenwick*'s Part: As to the aſſaſſinating Part, you have had ſeveral Examples made already: This we have Evidence to prove; and if we prove this Matter as we have opened it, then I think there is no Perſon whatſoever, but will agree that this is High-Treaſon in the higheſt Degree. Now, Sir, here ſtands our Matter: Here was an Indictment found, according to the Law you made laſt Seſſions of Parliament, by two Witneſſes to one Species of Treaſon againſt Sir *John Fenwick:* We have one of the Witneſſes here, *viva voce*; but Sir *John Fenwick* hath protracted hisTrial, by frequentAſſurances of making a Diſcovery, which hath terminated in what you have already mentioned in your Bill; by Means of which Sir *John Fenwick* hath not been tried; whereas he had been tried in Courſe, without theſe Applications, and found guilty: But now he hath had all this Time, that *Goodman* is withdrawn is plain, and, we think, (but that we muſt leave to the Judgment of this Honourable Houſe) may be reaſonably ſuppoſed, by Contrivance, to take off this Proſecution of Sir *John Fenwick:* For why? The Inference is from a Fact that we ſhall prove to this Honourable Houſe. There hath been the like Attempt upon Captain *Porter*; but Captain *Porter* hath been more ſtedfaſt: He hath been ſo reſolved, that he ſtood his Ground; and, to ſpeak the Truth, notwithſtanding he hath been highly attempted: For we ſhall prove to you, that one *Clancy* comes to Captain *Porter*, and attempts him to withdraw into *France*, with Aſſurance of a Pardon; and he hath 300 *l.* paid him in Hand, and 300 *l.* more he was to be paid when he ſhould come into *France*, to be remitted by Bills of Exchange: Beſides, he was to have 300 *l.* a Year; 100 *l.* from my Lord *Aylesbury*, 100 *l.* from my Lord *Montgomery*, and the other 100 *l.* a Year from Sir *John Fenwick*; and this to be an Annuity during his Life: And thus far we ſuſpect Sir *John Fenwick* may be concerned; for his Lady came (he did not come perſonally, but his Lady did), and gave her Honour and Aſſurance that it ſhould be all performed, and much more, if he would withdraw himſelf. Captain *Porter* preſently makes a Diſcovery of this, and takes the 300 *l.* which was paid down: Upon this it hath been ſo far proceeded, that *Clancy* hath been indicted for it, and convicted, and hath received Judgment; and, I ſuppoſe, there hath been Execution: We have the Record of all theſe Proceedings.

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We have this Circumſtance further in the Caſe, (which it is my Duty to open to this Houſe) to ſhew what Labour there hath been to ſtifle the Truth of the Fact, upon taking of Sir *John Fenwick:* There was one *Webber* taken with him, and he ſlid a Letter into one *Fowl*'s Hand, and this was to be ſent to my Lady *Fenwick*; and what is the Import of this Letter? The Import of it is they could not prevail with *Porter*, (as I opened it juſt now); therefore You muſt influence the Jury, get two or three ſtout Jury-men to ſtarve the reſt, for we have nothing elſe to depend upon. Theſe Things we ſhall humbly offer to prove, according to our Duty, and according to the Order of this Houſe; and then leave Sir *John Fenwick* to make his Defence.

Then the King's Counſel being about to produce their Evidence, Sir *Thomas Powis*, in Behalf of the Priſoner, ſaid, Mr. Speaker, ſince I am here aſſigned Counſel for the Priſoner, by the Allowance of this Honourable Houſe, upon his Application, without my Privity, I crave Leave humbly to acquaint you, in Behalf of my Client; I take it for granted that he is, I am ſure, we that are Counſel for him are, a little ſurpriſed in what the King's Counſel are going about; for, in Truth, we were not aware, nor do we find that any Notice was given to the Gentleman at the Bar, that there would be any Proceeding againſt him by examining of Witneſſes, or giving of Evidence: He had (it ſeems), the Vote of the Houſe ſent to him, and likewiſe a Copy of the Bill; but I could not underſtand, that the Houſe had given Notice, that he ſhould be prepared by Witneſſes, if he had any, or be at Liberty to produce them: Nor was there the leaſt Notice to him, that there would be a Proceeding againſt him by Way of giving Evidence. He did, as I find, humbly

Sir Thomas Powis *objects, they had no Notice to be ready with their Evidence.*

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humbly apply himſelf, by Petition, That he might be heard by Counſel, againſt the paſſing of the Bill; and I ſhall very carefully obſerve thoſe Directions you gave us; which I hope we ſhould not have ſtood in Need of, but have behaved ourſelves as becomes us, and not have drawn in Queſtion the Power of Parliament: I never had a Thought to do ſuch a Thing; but this I humbly lay before you for your Conſideration, Whether, without any Sort of Notice, that I perceive he had from this Houſe, to make his Defence to any Evidence, and conſequently there could be no Need of Witneſſes on his Behalf; whether you will ſo proceed, unleſs he had had Forewarning to provide himſelf otherwiſe than by the printed Votes, which (I ſuppoſe) he had no Opportunity of ſeeing? And, Whether, within the Words, you are pleaſed to acquaint us with, we may be heard, as to the Reaſonableneſs of this Proceeding, that by and by we muſt crave Leave to ſpeak unto?

Sir Bar. Shower *moves for further Time.*

Sir *Bartholomew Shower*, alſo of Counſel for the Priſoner, added, That they were ready to offer ſome Conſiderations againſt the Suggeſtions in the Bill; but were not ready to make his Defence againſt the Matter of Fact: That the firſt Time they had Notice that Sir *John* was to be brought to their Bar, was at nine or ten o' Clock the laſt Night: And the Order ſaid indeed, That the King's Counſel ſhould produce Evidence for the King as this Day; but it was not ordered, that the Evidence ſhould be produced on the Behalf of Sir *John Fenwick* at this Time, or indeed, that he ſhould be perſonally preſent; nor had they any Way to compel their Witneſſes to appear here.

Mr. Serjeant *Gould* anſwered, If the King's Counſel are to produce their Evidence by the Order, for what Reaſon could this be ordered, but that Sir *John* ſhould apply himſelf to anſwer it?

Then Sir *John*, and the Counſel on both Sides, being withdrawn, a Debate aroſe, Whether Sir *John* ſhould be allowed further Time to produce his Witneſſes? The Debate being opened by Sir *Thomas Littleton*, who ſaid,

A Debate thereupon.

Mr. Speaker, The Counſel could not think that the Bill ſhould ſet forth, That Sir *John Fenwick* was indicted, but that the Houſe would know by what Means. And that *Goodman* was gone away, and we ſhould not enquire by what Means. What are the Objections made by the Counſel to the Bill? Say they, We are ready to give Reaſons againſt the Bill: They do not ſay downright againſt your Juriſdiction; but that they are ready to ſhew you, it is not reaſonable in this Caſe, as Circumſtances ſtand, to paſs this Bill: Sir *John*'s Petition was to be heard downright againſt the Bill. If that was your Intention, to hear him to that only, I conceive you would not have worded your Anſwer as you did: You ordered him Counſel to make his Defence; and, at the ſame Time, ordered the King's Counſel to produce the Evidence: How could they underſtand it, but to make a Defence to the Evidence? It may be they have a Mind to another Fee: Whether you will think fit in the Circumſtances you ſtand, to give them further Time, I do not know; but the Circumſtances of the Kingdom, and the King's Life, muſt be conſidered as well as Sir *John Fenwick*: What is the Meaning that they are not prepared? I ſuppoſe it is to have a Pretence for further Time: But I think your Order is ſo plainly worded, that they could not miſtake it.

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Mr. *Cowper*, of the ſame Side, ſaid, The Counſel for Sir *John Fenwick* ſay, we come prepared to make a Defence to every Thing charged in the Preamble of the Bill; but what is not charged, we do not come prepared to make a Defence to. Now they conceive the Fact of High-Treaſon is not charged upon him by the Bill; and, if that be true, it is of great Weight; but as it is, 'tis none: For firſt, it is plain, the Preamble recites, That he was indicted for High-Treaſon by the Grand Jury, That is a Charge of High-Treaſon within the Bill: For it ſays, he was charged by the Oaths of his Country, upon the Oaths of two Witneſſes; and there is the very Overt-Act recited in the Preamble of the Bill. Now, allowing this its due Weight, can any one think, that ſits here as a private Judge, That the High-Treaſon thus recited, as found by the Grand Jury, is no Part of the Charge? The very Nature of the Bill ſpeaks: For could any one think, you would ground a Bill of Attainder upon a Suggeſtion, That he, being indicted of High-Treaſon, had ſpirited away one of the Witneſſes, or given a falſe Information? So that this is trifling with the Houſe, with Submiſſion.

Sir *Richard Temple*, on the other Side, ſaid, Can any body ſay any Thing of the Intention of the Houſe, when it is reduced into a Bill? Is it not the Bill he is to make his Defence to? And the Gentleman who ſpoke laſt, ſays, That no body could think otherwiſe: why, Sir, no body is to think otherwiſe than as the Bill ſtates it.

Now the Thing before you is, Whether, upon the Suggeſtions in this Bill, it is fit for you to paſs it? The Caſe of *Mortimer* was, That he had made his Eſcape, being under an Indictment of High-Treaſon, and it came before the Houſe, Whether upon the Statute of 25 *Edw.* III. it was High-Treaſon? but they did not debate the Fact. Now you have brought a Bill here; and all the Ground is, That he was indicted for High-Treaſon; had thus and thus prevaricated and delayed his Trial upon Promiſes of Confeſſion; and in Concluſion, one of the Witneſſes is withdrawn. Sir, no Man is to make his Defence but to what is in the Bill; nor can you examine to any Thing but what is ſuggeſted in the Bill. If you had put the Iſſue upon the *Guilt* of Sir *John Fenwick*, he muſt have had a fair Trial in ſome Place, and that he cannot have here upon Oath; for upon all Bills of Attainder hitherto, they have had a fair Trial above *(in the Houſe of Peers.)*

Mr. *Hooper*, on the ſame Side, ſaid, The Queſtion is, Whether or no there be a ſufficient Guilt laid to this Man's Charge? For in all Courts of Judicature, this is a certain Rule, you muſt proceed *ſecundum allegata & probata*; and

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and you ſhall not go about to prove a thing unleſs it be alledged. Now the Queſtion is, Whether this Thing be alledged in the whole Bill, *That Sir* John Fenwick *is guilty of High-Treaſon?* And if not, you will not go about to prove what is not alledged. 'Tis true, it is alledged that a Bill hath been found; but ſeveral have been indicted who have been acquitted. It is poſſible the Priſoner at the Bar may be guilty; but I think we muſt obſerve that Method here, that is obſerved every where elſe; and that is, not go about to prove any thing that is not alledged.

Mr. *Sloane*, on the other Side, ſaid, I will allow the Bill might have been drawn better, and that a bare Indictment is not a ſufficient Ground of itſelf for a final Deciſion of this Matter: But when, at the Time of finding the Indictment, there were two Witneſſes, and one of them is withdrawn, and, as is ſuppoſed, by his Means; if the Bill ſeems imperfect for any thing before you now, you will not ſtay all Proceedings upon it; but if you ſee it imperfect, and it may be amended, you will amend it at the Committee. I think, the Favour you have given is abuſed, and that it is perfect trifling from the Bar: In one Breath they ſay, They could not get ready, for they had no Notice till laſt Night; and in the next they ſay, They will go on to every thing, but his being guilty; and I believe they will never be prepared for that. Whereupon *Mr. Attorney General* ſaid,

Sir, I am very unwilling to ſpeak any thing in this Matter; becauſe, Sir, by the Place I have the Honour to ſerve his Majeſty in, as one of his Counſel, if it was in the Courts below, I muſt proſecute on the Behalf of the King: But, I am very ſenſible, while I am in this Houſe, I am in another Capacity; I am to vote here as a Judge, and not as a Party.

That which I do now trouble you about, is in Relation to the Matter that hath been objected, That the Bill does not expreſly affirm, that Sir *John Fenwick* was guilty of High-Treaſon, but only that he was indicted for it: Truly, I thought, and do ſtill, with humble Submiſſion to the Houſe, That that Matter of affirming him to be guilty of High-Treaſon, was not to be inſerted in the Bill; for that will be the Conſequence of your Judgment and Opinion upon hearing of the Evidence. That worthy Member that ſpake laſt ſaid, the Bill might be better drawn: I am ſorry we had not his Aſſiſtance in it; but, with Submiſſion to his Underſtanding, I think that had been too much Preſumption, till you are ſatisfied whether he was guilty or no: We could only go ſo far as to ſet forth the Faults that we knew; as, that he was indicted, that we can verify, and cannot take this to be like the Caſe of an Indictment; for there you muſt affirm ſuch and ſuch things that cannot be altered afterwards; but a Bill in Parliament hath many Steps, you read it ſeveral Times, and commit it; ſo that you alter the Suggeſtions of the Bill as the Caſe appears to you to be verified; and if you be of Opinion that he is Not Guilty, you will not condemn him becauſe he is indicted: However, that is not immaterial, but proper to be ſet forth for a Ground of your Proceedings, That there was a Probability of his being guilty from that Accuſation: Therefore, Sir, I confeſs, I cannot think that thoſe Gentlemen, that are of Counſel for Sir *John Fenwick*, could think that you did intend to proceed otherwiſe than to hear Counſel as to the Fact; they could not think that, upon Proof of his being indicted, that would be Ground enough for you to proceed to paſs the Bill; for how could any body think, but you would come to examine the Fact? I cannot ſee how they ſhould come to miſtake, unleſs it was willfully.

Colonel Granvill, on the other ſide, ſaid, Sir, the Counſel (by what I obſerved from them) have ſtarted two Difficulties, and really (to me) both ſeem very material: The Firſt is, whether the King's Counſel ſhall be at Liberty to prove any thing that is not ſuggeſted in the Bill; the other is, whether Sir *John Fenwick* had due Notice to make his Defence.

The firſt is a Matter of very great Moment: You are proceeding upon a Bill, where not only the Life of Sir *John Fenwick*, but the Life of every Man in *England*, is in ſome Meaſure concerned: When a Precedent is made in this Caſe, no body knows who may be affected or hurt by it; and therefore I deſire you will ſettle that Matter, and have the Judgment of the Houſe, whether they will admit the Counſel to prove any thing that is not ſuggeſted in the Bill: If you will, I do not ſee how any Man that ſtands at the Bar of your Houſe can be prepared to make his Defence; for there ſhall be one Crime alledged in the Bill, and when he comes to the Bar, the Council that are to proſecute, ſhall go quite off from that which is laid in the Bill, and produce you Evidence to a new Crime; and he ſtares and looks round him, and you had as good allow him no Counſel or Copy of the Bill. This you thought ſo neceſſary for every Man, that was to come upon his Trial for his Life, for Treaſon, that you altered that Trial, and declared, No Man ſhould have any Treaſon proved againſt him, that is not alledged againſt him in the Indictment.

We have had great Complaints of *Weſtminſter-Hall*, and, if the Parliament ſhould proceed in this Manner, may have the ſame again: If they are too raſh in their Proceedings, they will be countenanced mightily in them, if you ſhould proceed againſt a Man, and condemn him for one Thing when he is accuſed of another. I deſire to know how we can proceed in a Bill, upon which Sir *John Fenwick* is to be proved guilty, and he hath no Opportunity to anſwer it? I take it as this Bill is drawn, Sir *John Fenwick*'s Guilt is no way concerned in it: For, whereas the worthy Gentlemen tell you, the Treaſon is ſpecified, there is no Treaſon ſpecified, otherwiſe than he is indicted for it.

Mr. Whitaker, on the other Side, ſaid, As to the Exceptions made to the Inſufficiency of the Bill, by which they pretend Sir *John Fenwick* was led into an Error, ſo that he had no due

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due Notice; I muſt needs ſay, if they had been in *Weſtminſter-Hall*, they would have been in the Right: But this Houſe is not bound to thoſe Forms; for, I believe, the enacting Clauſe would do the Buſineſs of Sir *John Fenwick* well enough, if all the reſt were laid aſide; and I will conſider it, with as much Tenderneſs and Conſcience for the Priſoner at the Bar, as any that bring Arguments from *Weſtminſter-Hall:* I would conſider, whether ſuch a Defence as they have made, that from the Bill (as to what is laid in it) he had not Notice enough to prepare to make his Anſwer. They ſay a Recital is no direct Affirmation: In Civil Matters, it is an Affirmation; for to ſay, *Whereas ſuch a one is bound*, is good in a Declaration upon a Bond; now, I would know, Whether it be not enough to ſay, *That he is indicted*, without an Allegation *that he is guilty?* Had the Bill no Recital at all, it might have been neceſſary for them to have deſired the Opinion of the Houſe, to what they ſhould have anſwered; but here the Treaſon is ſpecified in the Preamble of the Bill; and I agree, that the King's Counſel ought not to give Evidence of any Treaſon that is not ſo ſpecified.

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Roe's Evidence.

Then Mr. *Roe* was called a Witneſs, who teſtified, That having ſome Buſineſs with *Dighton*, Sir *John*'s Solicitor, *Dighton* took an Opportunity to acquaint him, that it lay in his (*Roe*'s) Power to do Sir *John* a Piece of Service, as he was acquainted with *Goodman*; and that, if he could diſcredit *Goodman*'s Teſtimony, he ſhould have an hundred a Year ſettled on him for Life: That *Dighton* particularly asked him, if he ever heard of *Goodman*'s attempting to poiſon the Duke of *Norfolk*, of his robbing on the Highway, or of his being concerned with Clippers: And that he (*Roe*) immediately went and told *Goodman* of the Propoſal that had been made him; whereupon *Goodman* adviſed him to get ſomething under *Dighton*'s Hand; and that *Dighton* afterwards made ſolemn Proteſtations, that what he had promiſed ſhould be punctually performed: And that *Goodman* alſo told him (*Roe*), that Sir *John Fenwick*'s Siſter had been with him, and made ſome Overtures. Clancy's *Conviction alſo was read, as Evidence againſt the Priſoner.*

Goodman's *Examination offered as Evidence. Oppoſed by Sir* John's *Counſel.*

Then the Counſel for the Bill were about to read the Examination of *Goodman*, taken by Mr. Secretary *Vernon*, which the Priſoner's Counſel oppoſed, repreſenting, that an Examination ought not to be read againſt Sir *John Fenwick*, to which he was neither Party or privy, and had no Opportunity of croſs-examining the Witneſs: That in a Suit for the Value of five Shillings, an Examination could not be read as Evidence; and if it was not admitted where Property was concerned in the loweſt Degree, much leſs ought it to be admitted in a Caſe of Life. ---- That the Depoſition of a Perſon beyond Sea could not be read in Civil Caſes, unleſs the Party, againſt whom it was read, had been privy to the Examination, and had an Opportunity of croſs-examining him, or objecting to his Credit: But in Criminal Caſes it was never admitted; and even in an Appeal of Murder, the Depoſitions taken before the Coroner could not be read, becauſe it was another Suit, as this was no more than an Information before a Juſtice of Peace: If *Goodman* had been dead it could not have been given in Evidence; or if he had been ſick, or withdrawn without the Priſoner's Privity, it would not have been Evidence in any other Place.

The Counſel for the Bill anſwer them.

The Counſel for the Bill, on the other Hand, inſiſted, That though an Examination could not be read where the Witneſs might be produced, yet it was every Day's Practice to read Depoſitions where the Witneſſes were dead, and here the Witneſs was withdrawn: And it appeared there had been tampering with another, from whence it may be preſumed *Goodman* was tampered with too; and one Reaſon for bringing this Matter before the Parliament was, to provide a Remedy againſt ſuch Practices; nor did there want Inſtances of reading an Information, even in a Capital Caſe, where it appeared the Witneſs was withdrawn by the Practice of the Priſoner, as this Caſe was: However, they obſerved this Houſe was not tied up by ordinary Rules. The Counſel for the Bill added, That they did not offer this Evidence as concluſive alone, but to corroborate *Porter*'s Teſtimony, who had given his Evidence *viva voce:* But the Counſel for the Priſoner ſtill affirming, That no ſuch Examinations were ever read in Capital Caſes, both the Priſoner and the Counſel were withdrawn, and the Houſe debated that Matter among themſelves. One Gentleman ſaid, he never till now heard any of the Long Robe endeavour to maintain, that an Examination before a Juſtice of Peace ought to be read as Evidence againſt a Man for his Life. To which another anſwered, that the Lord Chief Juſtice *Hales*, in his Pleas of the Crown, under the Head of Evidence, held, That ſuch Examinations might be given in Evidence, where the Party was dead or abſent. Another Member replied, That ſuch Depoſitions were never given in Evidence in the worſt of Times; even at the Trial of the Lord *Mordant*, when Juries were diſuſed, it would not be admitted; and they were tried by the Rules of Law, or they were tried by nothing.

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A Debate as to the reading Goodman's Examination.

Arguments for it.

Another ſaid, He ſhould not look upon himſelf to be ſo tied up by the Rules of Law, but that he might hear all the Evidence that could be offered: If they could not have the two Witneſſes, on whoſe Teſtimony the Bill was found, they would take ſuch Evidence as they could get: And one ſaid, he had ſeen a Juſtice of Peace examined concerning the Depoſitions he had taken, and he took it to be ordinarily done.

Arguments againſt it.

On the other Side, a learned Member obſerved, That if they were to collect all the Abſurdities out of the Trials of the late Reigns, they would not find more than had been advanced by the Counſel for the Bill; and if thoſe Depoſitions were Evidence, where the Witneſs was abſent, there had been no need of this extraordinary Way of proceeding in Parliament. This Gentleman was ſeconded by another, who obſerved, *That Bills of Attainder, and Judgments of Attainder, had been reverſed, for no other Reaſon, but becauſe the Parliament had not proceeded by the Rules of Law*; and if they were not bound by the Rules of Inferior Courts, yet they muſt by the Laws and Practice of Parliaments; and it was never known that this Houſe ever admitted Affidavits as Evidence; for if they did, they muſt make this, which was a Superior Court, lame and defective, and to want the Aſſiſtance of an Inferior Court.

For it.

It was replied, by a Gentleman for the Bill, That though this might be Evidence in Felony, in a Court of Law, yet it could not be deemed Evidence there in Treaſon, becauſe the Law required two living Witneſſes in Treaſon; there was a Neceſſity therefore of reſorting to the Parliament: But in Caſes of Felony, where two Witneſſes were not required, ſuch Evidence was admitted frequently: The Lord Chief Juſtice *Hales*'s Opinion, alſo, was ſo, and that was grounded on an Act of Parliament.

Another Member's Reaſons againſt it.

A Gentleman, who was againſt the Bill, thereupon obſerved, That if an Act of Parliament could be produced for it, the Debate was at an End; but if there was an Act poſitively againſt ſuch Evidence, then he hoped they would reject it: That the Caſe in the Lord Chief

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Chief Juſtice *Hales* related only to Felony; He ſays, that Informations may be taken of the Perſon himſelf, (though not by the Common Law) by particular Acts of Parliament; and the Depoſitions of Witneſſes might be admitted, but then the Party ought to be preſent; and if they would produce a Statute for an Authority, they muſt offer a Statute that was in Point: He thought it was of the laſt Conſequence to admit Affidavits in that Houſe.

Anſwered by the other Side.

To this a Member for the Bill anſwered, There had been a Statute lately made, indeed, which required two living Witneſſes in Treaſon; but in that very Statute it was provided, that Proceedings in Parliament ſhould not be affected by it; and he was not for refuſing any Evidence in this Caſe, though never ſo ſmall. And a Gentleman obſerving, on the other Side, that an Affidavit was never read in Caſe of an Impeachment, which very much reſembled this:

A Member for the Bill took notice, That all the Caſes that had been cited, were brought from Inferior Courts, except the laſt, which related to the Uſage in leſs conſiderable Caſes: But a Bill of Attainder was an extraordinary Thing, and never uſed but upon extraordinary Occaſions; The Queſtion here was only as to the Forms of their Proceedings; and the Law had entruſted the Parliament with a greater Power than they were now about to execute: They might declare that to be a Crime, which was deemed no Crime before it was committed; and ſurely they might determine what they would admit as Evidence of a Crime: Another added, There was lodged in the Legiſlature, a Power to judge thoſe Crimes that were ſheltered from the Law; and he thought never any Attainder was brought in upon a juſter Occaſion than this: The Priſoner was not only in a Plot to bring in a Foreign Power; but had given in a falſe and ſcandalous Information, to create a Diſtruſt and Jealouſy between the King and his People; and had trifled with the Government, and gained ſo much Time, that he had found an Opportunity to corrupt one of the Witneſſes; and it would be hard, if the Legiſlative Power could not reach him.

A Reply by the Members againſt it.

It was replied by the other Side, That though this Houſe was not bound by the Rules of inferior Courts, they ought to give ſuch Rules and make ſuch Precedents as were fit for other Courts to imitate: That this might be a dangerous Precedent for future Parliaments to act by: For ſuppoſe the Information Sir *John Fenwick* had given in, ſhould hereafter be produced as Evidence againſt any of thoſe Honourable Perſons he had accuſed; and ſome Raſcal in a future Reign ſhould come in alſo againſt them, would it not be thought a great Hardſhip, and a Piece of Injuſtice, to make ſuch a Paper to ſupply the Place of a ſecond Witneſs; and paſs a Bill to attaint them of High-Treaſon on ſuch Evidence? Of what Conſequence would this be?

Reſolved that Goodman's Examination ſhould be read.

But the Queſtion being put, *That the Information of* Cordell Goodman, *taken upon Oath, the twenty-fourth of* April, 1696, *ſhould be read:* It was carried in the Affirmative; *Yeas*, 218, *Noes* 145.

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Then the Priſoner and the Counſel were called in again; and the Information of *Goodman*, made before Mr. Secretary *Vernon*, was read; wherein he depoſed, That there had been a Conſpiracy to ſeize the Perſon of King *William*, and raiſe a Rebellion, for two Years then laſt paſt: That the Conſpirators had applied themſelves to King *James* for a Commiſſion to countenance the Attempt; but that Prince was angry that his Name had been uſed in it: Then he gave the ſame Account of the Meeting of the Conſpirators at the *King's-Head*; and their ſending over *Charnock* to *France*, to procure a Body of *French* Troops, as *Porter* had done: And further depoſed, That Sir *John Fenwick* uſed to ſend over Liſts to *France* of the Number of our Forces here, and where they were quartered from Time to Time: And that after Colonel *Parker* eſcaped out of the *Tower*, he (the Informant) asking Sir *John Fenwick* how much Money it coſt to procure the Colonel's Eſcape, Sir *John* anſwered, 300 *l.* And that it was agreed, If Colonel *Parker* did not bring timely Orders, He *(Goodman)* and *Porter* ſhould receive their Orders from Sir *John Fenwick*, when the Forces were to be raiſed; and that Sir *John* looking upon it as dangerous to keep their Horſes together, leſt they ſhould be ſeized, thought it the beſt Way to have them diſperſed in the Stables about Town, and a Liſt made of their Numbers, and the Places where they ſtood.

The Tenor of it.

The Grand Jury-men examined.

Then the Counſel for the Bill called ſome of the Grand Jury-men, who found the Indictment againſt Sir *John*, to give an Account what Evidence *Goodman* gave to induce them to find the Bill: And though it was objected by the Priſoner's Counſel, That an Indictment itſelf was but an Accuſation, and could not be given in Evidence againſt any Man; and that nothing which was ſworn before the Grand Jury was ever made uſe of at the Trial of the Priſoner; yet the Majority of the Houſe being of Opinion that this was good Evidence in this Caſe, *Gracediu* and *Mead*, two of the Jury, were examined, and teſtified, That *Goodman* gave the ſame Evidence before them, he had given at his Examination before Mr. Secretary *Vernon* (already recited).

The Record of Cook's *Conviction offered as Evidence.*

The Counſel for the Bill afterwards produced the Record of *Cook*'s Conviction; alledging, That the Evidence *Goodman* gave at that Trial affected Sir *John Fenwick* as much as it did Mr. *Cook:* To which the Priſoner's Counſel objected, That this was ſuch Evidence as was never given in a Court of Law; For at this Rate, the Trial of one Conſpirator would be the Trial of all the reſt; and they hoped it would not be admitted here.

Oppoſed.

Whereupon the Counſel for the Bill anſwered, Thoſe Gentlemen made their Objections as if they were in the inferior Courts: But the Houſe here were Judges of the Methods of coming at the Truth: And that, a Witneſs being withdrawn by Artifice, they came there to get that Defect ſupplied.

The Priſoner and the Counſel being withdrawn again, the Houſe entered upon the Debate of this Matter: And a Gentleman, who was againſt the Bill, obſerved, That ſuch Evidence

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vidence had never been admitted in a Court of Law, or in that Houſe; namely, the Evidence that was given at the Trial of another, made Evidence againſt a Perſon who was not preſent, and had no Opportunity of defending himſelf againſt it: Another Member demanded, If they were to read all the Trials for the Plot? Whereupon it was demanded, by a Gentleman who was for the Bill, Why they admitted the Evidence *Goodman* had given to the Grand Jury to be repeated? This was but the Evidence of what he had ſaid to the Petit Jury: If nothing but ſtrict Proof was to be offered, this Bill had never been brought in; but they were to accept of ſuch Proof as the Nature of the Thing would bear.

To which the other Side anſwered, If they had determined at firſt, that they would not expect legal Proof, they might have ſhortned their Debates pretty much: Another ſaid, They were put upon paſſing a Bill of Attainder againſt a Man, and were not allowed to talk of Proof: If they had no Evidence for it, he was ſure there was Evidence againſt it: For at *Cook*'s Trial, two or three Witneſſes had ſworn, that *Goodman* was not at the Meeting at the *King's-Head*, where he ſwore he was. Another Gentleman put them in Mind, that a great many Judgments in the late Reign had been reverſed, becauſe they received ſuch Evidence at thoſe Trials, as was not legal Evidence; and that this Grievance was taken Notice of in their Bill of Rights.

To which it was replied, by a Gentleman for the Bill, That had *Goodman* ſworn at that Trial, that Sir *John Fenwick* was not at the *King's-Head*, Sir *John* might have produced a Witneſs, to prove what he had ſworn; and why might not the Evidence which made againſt him be proved? Whereupon a Member, who was againſt the Bill, replied, It was one Thing to produce a Record to convict or attaint a Perſon, and another, when it was produced, to prove a Man perjured, or to invalidate his Teſtimony: For when Evidence was brought againſt a Priſoner, he had no Way to leſſen it, but by what was collateral: And where the Witneſs had given contrary Evidence at another Trial, or the Priſoner had been acquitted, Then the Record might be made uſe of againſt that Witneſs; but could never be made uſe of to convict or to attaint any Perſon.

The other Side ſaid, They did agree, that neither the Conviction of *Cook*, nor any Evidence upon his Conviction, could be Evidence againſt Sir *John Fenwick*: But it was one of the Allegations in the Bill, That ſeveral Gentlemen were preſent at the Meeting at the *King's-Head*, where Sir *John Fenwick* was charged to be; and they produced it to make good that Allegation: And the Queſtion being put, That the Record of the Conviction of *Peter Cook* be read, it paſſed in the Affirmative; *Ayes* 181, *Noes* 110; and accordingly that Record was read.

Reſolved to read the Record of Cook's *Conviction.*

The Evidence of what Goodman *ſwore at* Cook's *Trial offered.*

The next Thing the Counſel for the Bill propoſed, was, to examine ſome of the Jurymen who ſerved at *Cook*'s Trial, and ſome other Witneſſes, to prove what *Goodman* had ſworn at that Trial; which the Counſel for the Priſoner oppoſing, they were all ordered to withdraw again.

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A Debate thereupon.

Then a Member, who was againſt the Bill, ſaid, He thought it had been admitted by the other Side, in the former Debate, That no ſuch Evidence ought to be admitted: But, if they were not to be guided by the Rules of *Weſtminſter-hall*, he was ſure they ought not to ſeek a Way to the King's Favour, by attainting a Man of High-Treaſon, upon incompetent Evidence.

It was ſaid on the other Side, That it was every Day's Practice in Civil Caſes, to hear what a Witneſs had ſaid at another Trial between the ſame Parties, where a Witneſs was dead: To which it was anſwered, That in thoſe Courts a Witneſs muſt ſwear true at his Peril; for if he did not, he might be puniſhed for it: But here, if he takes away a Man's Life by what he ſays, What Remedy was there againſt him?

Others ſaid, If there was not another Place where the Witneſſes would be ſworn, they could not give their Conſent to the paſſing this Bill, for the Witneſſes for the Priſoner were not ſworn: So that they could only *give an Opinion* upon the Probability of the Matter.

Another Member againſt the Bill, ſaid, He could not but take Notice of what had been ſaid by the other Side, That they had done as much as this comes to already: This made him ſtill more apprehenſive, and to take care what he did now; ſince what the Houſe did, had ſo quick an Operation, and they were already citing Precedents of that very Day, and ſtill making one Thing a Handle to draw on another.

Reſolved to examine the Witneſſes of what Goodman *ſwore at* Cook's *Trial.*

However, it was reſolved upon the Queſtion, *That the Counſel for the Bill ſhould be allowed to examine Witneſſes of what* Goodman *ſwore at the Trial of* Cook; *Ayes* 180, *Noes* 102: And thereupon the Priſoner and the Counſel being called in again, two or three of the Jury-men at *Cook*'s Trial were examined, as to what *Goodman* ſaid at that Trial; and anſwered, That *Goodman* depoſed, he was introduced into the Company of the Conſpirators at the *King's-Head*, by Mr. *Porter*; and there Sir *John Fenwick* and the reſt agreed to ſend *Charnock* to *France*, to procure Forces from thence; and another Perſon, who was preſent at *Cook*'s Trial, teſtified the ſame: And it being demanded of the Witneſs, If any Exception was taken then to *Goodman*'s Credit? He anſwered, It was objected that *Goodman* had been guilty of ſeveral Crimes; to which it was ſaid, he had his Pardon, and was then a good Witneſs. Then the Counſel for the Bill deſired to read the Letter above-mentioned, to be written from Sir *John Fenwick* to his Lady from *Romney*, after he was apprehended: But Sir *John*'s Counſel inſiſted, that this Caſe came ſhort even of Colonel *Sidney*'s; for there, as the Act of Reverſal recited, The Writing was found in the Colonel's Cloſet, and proved to be his Writing by a Compariſon of Hands; and yet that was held to be illegal Evidence: But here was no Proof even by Compariſon of Hands, or that the Letter was ever in Sir *John Fenwick*'s Poſſeſſion: And at length, the Counſel for the Bill, thought fit to waive this Piece of Evidence: And it being now very late, Sir *John*'s Counſel were ordered to make their Obſerva-

Sir John's *Letter to his Lady offered as Evidence; but rejected, the Hand not being proved.*

tions

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tions on the Evidence for the Priſoner the next Morning: But were told, If they had any Witneſſes to examine, they muſt produce them that Evening; for they could not hear Witneſſes afterwards: To which Sir *John*'s Counſel anſwering, They ſhould call no Witneſſes; but when they came to ſpeak, they ſhould give the Houſe Satisfaction why they did not think it neceſſary to produce any; the Priſoner and his Counſel withdrew, and the Houſe ſoon after broke up.

On *Tueſday*, the 17th of *November*, Sir *John Fenwick* and the Counſel on both Sides were called in again; and the Speaker directing the Counſel for Sir *John* to make their Obſervations on the Evidence that had been given, Sir *Thomas Powis* ſaid, Mr. Speaker, I am of Counſel for Sir *John Fenwick*, who now ſtands before you, upon the greateſt Concern he can have in the World; and as you have been pleaſed to aſſign us to be of Counſel for him, and, I muſt own, have very favourably heard us hitherto; ſo I ſhall think my ſelf very unfortunate, if I ſhould let fall any Expreſſion in his Defence, that would ſeem indecent and give Offence to this Houſe, for I am ſure I have no Intention to do it; but, on the contrary, to behave myſelf with all the Deference that is poſſible, in a Caſe of this Nature. I ſhall inſiſt upon three Heads: 1. The Manner of Proceeding, and Method that hath been taken in this Proſecution: 2. I ſhall take notice of thoſe Things that are alledged againſt him in the Bill: And, 3. I ſhall beg your Favour, to obſerve what Sort of Proofs they have offered on the other Side; and *which they call Evidence*.

Obſervations on the Evidence by Sir Thomas Powis.

As to the Firſt Matter, I muſt intreat the Favour of you to be thus underſtood; That when I ſay any Thing in Relation to the Manner of Proceeding, I do not ſpeak in Oppoſition to the Power of Parliaments; for I know very well, that our Lives and Eſtates, and all that we have, are ſubject to Acts of Parliament: But I hope you will permit me to offer ſome Reaſons, which (I hope) may be of Weight, in Oppoſition to the exerciſing of that Power, in the Way you are now going. No body can ſay, but when an Act of Parliament is paſſed, though the Party concerned may think it was upon hard Terms; yet, when it is become a Law, it is not to be oppoſed. I cannot ſay, but thoſe Perſons, who in the laſt Seſſions were impriſoned by an Act *ex poſt facto*, and ſubſequent to the Fact complained of, might think it a Hardſhip; yet when it was paſſed into a Law, they were legally detained: But, I hope, I may ſo far take notice of their Caſe, as ſome Kind of Reaſon againſt this, to the End that thoſe Laws may not grow familiar, that they may not eaſily be obtained; becauſe Precedents generally grow; and as that Law *ex poſt facto* extended to Liberty, ſo this extends to Life: One Precedent is apt to beget another; and therefore ſurely you will be careful how you give Precedents, eſpecially in Caſes of Life.

The firſt Thing I obſerve is obvious; that is, The Perſon who is to be ſentenced by this Bill is forth-coming, in order to be tried in the ordinary Method of Juſtice. He is not only indicted, and actually under Proceſs, but hath pleaded; and is ready when his Majeſty, in the Courſe of Juſtice, ſhall call upon him, to undergo his Trial: And either there is ſufficient Evidence, legal Evidence againſt him, as the King's Serjeant inſiſted there was; and if there be ſo, then, under Favour, there is no Reaſon but he ſhould have the Benefit of an Ordinary Trial, which is the Birthright of all the King's Subjects: Or there is not ſuch Evidence againſt him; and if there be not, it will be a good Reaſon againſt the making a particular Law for taking away his Life: For, we think, nothing can be ſaid for this Law, but Want of Evidence; and that, to my Underſtanding is a very odd Reaſon.----Sir, I would not ſpend Time in taking Notice, That the meaneſt Subject in the Kingdom is entitled, by being born in this Kingdom, to be tried by a Jury, where there are thoſe juſt Advantages that cannot be had in another Caſe: There is a Liberty of challenging thirty-five, without ſhewing any Reaſon, and as many more as he can any Way object to with Reaſon. The Witneſſes are upon Oath, and all the Proceedings are by certain known Rules and Methods; and not only by the Statute of *Magna Charta*, but by the Common Law of *England*, much more antient than that Statute: And though the Proceedings therein, are ſuch as a Criminal may ſometimes eſcape; yet the juſt Advantages are ſo much beyond any Thing of that Nature, that I hope we ſhall never complain of that antient Courſe of Proceeding by Jury: I am ſure it is the Honour of our Government, the Mark of our Freedom, and the Envy of our Neighbours; and I hope that Method of Trial ſhall never be laid aſide, though it ſometimes may not have the Effect that is deſired by it.

I would take notice to you, That in a Caſe of the greateſt Crime, and moſt Notoriety of Fact; yet the Perſons concerned in it were brought to their Trial. The Regicides who did not fly, but were found upon the Reſtoration of King *Charles* II. though their Treaſon had the worſt Effect, even the Murder of the King; yet notwithſtanding, though the Fact was ſo notorious, thoſe that were found upon the Place, were admitted to their Trials, in the ordinary Courſe of Juſtice; although at the ſame Time, there was a Bill of Attainder againſt ſome that fled, and ſome that were dead, and ſo could not be tried----- I would, with your Favour, likewiſe obſerve, That the Parliaments of *England* have been ſo far from depriving Perſons of their ordinary Trials, that whereas the common Law of *England* ſays, That Perſons out-lawed for Treaſon and Felony, if taken, ſhall be put to Death without Trial; yet the Parliament, in the Reign of *Edward* VI. made a Law, providing, That Criminals, who returned within a Year according to that Law, ſhould be admitted to their ordinary Trials.

Sir, all along the Statutes run in Favour of Trials: There are no leſs than two Acts of Parliament in the Reign of *Edward* VI. in the firſt and fifth Years of his Reign; which ſay, There ſhall not be leſs than two Witneſſes againſt any Perſon for Treaſon: And I hope

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I ſhall never ſee a Law made ſo much in Oppoſition to thoſe Acts, as that a Perſon ſhall be ſentenced to Death, without ſo much as one Witneſs.

Perhaps it may be thought extraordinary, That in the ſame Parliament that paſſed a Bill for regulating Trials in Caſes of High-Treaſon, requiring two Witneſſes with great Strictneſs, and giving further Advantages to the Priſoner than ever were allowed before; an Act ſhould paſs to put a Perſon to Death, without any Trial at all. Let any one compare the Preamble of that Act with this Bill.

Sir, I take it, with humble Submiſſion, that the preſent Caſe is not at all to be likened to moſt of thoſe Bills of Attainder that may be cited: Thoſe, when they come to be looked into, will be found either to have paſſed againſt ſuch Perſons as fled from Juſtice; and therein they only purſued the Rules of the common Law, which allowed them to be outlawed, and conſequently attainted. And the Parliament therefore, in attainting them, did but the ſame Thing; and therein there was nothing done extraordinary. True it is, that where Perſons have been forth-coming, there have been ſome few Bills of Attainder; but I will preſume to ſay, they are never mentioned without heavy Cenſures, and a great Complaint againſt them.

This Caſe is not like the late Inſtance of the Bill of Attainder againſt the Duke of *Monmouth*, who was preſent in the Kingdom indeed; but in direct Oppoſition to any Method of Trial, he ſtood in Defiance of all Courts of Juſtice: But here is a Perſon that ſubmits himſelf, and hath pleaded, and ſtands ready to be tried: And I hope I may take notice, to take off all Prejudice that may be raiſed, That this Gentleman, though he was of the Parliament that paſſed that Bill (againſt the Duke of *Monmouth*), yet he was not in Town till a Month, at leaſt, after the Bill was paſſed.

I do agree, there are ſome Caſes where Perſons have been attainted, without being admitted to be tried. In the Beginning of the Reign of *Edward* III. *Roger Mortimer* was attainted and executed, without being tried; but in the 28th of *Edward* III. *it was reverſed, becauſe he was not brought to Judgment, according to the Law of the Land.* The like happened in the Caſe of *Edmund* Earl of *Arundel*, 1 *Edw.* III. But in 4 *Edw.* III. *Richard* his Son petitioned the Parliament, ſetting forth the Proceedings to be againſt the *Great Charter*; and inſiſting, that there ought to have been due Proceſs of Law; and he was then reſtored in Part: And in the 28th of *Edw.* III. there was an Act of Reverſal, declaring, That it clearly appeared, that the ſaid *Edmund* was unduly put to Death; and that the Statute by which he was attainted, was void, erroneous, and null: There is an Inſtance in 32 *Hen.* VIII. *Co.* 4. *Inſt. fol.* 37. of *Thomas Cromwell* Earl of *Eſſex*, who, tho' he was in Cuſtody in the *Tower*, yet was attainted without being tried: But the Words of my Lord *Coke* thereupon, are as follows: *Auferat oblivio, ſi poteſt; ſi non, utcunque ſilentium tegat:* For the more high and abſolute the Juriſdiction of the Court is, the more juſt and honourable ought it to be in its Proceedings; and to give Examples of Juſtice to Inferior Courts. And he adds further, to the End, as I apprehend, that the Reverſal of this Attainder may be of no ill Uſe: I am confidently perſuaded, ſuch worthy and honourable Members, ſhall from Time to Time, be of both Houſes of Parliament, as never any Attainder, when the Perſon is forth-coming, ſhall be had hereafter, without hearing him; which I underſtand to be without trying of him: And it is memorable what my Lord *Coke* recites, That he, who thus died, attempted the like againſt another.

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There is another Caſe of *Thomas Seymour*, Admiral of *England*, who was likewiſe attainted by Act of Parliament, and executed, 3 *Edw.* VI. 1549.----You have an Account thereof in the ſecond Part of the Hiſtory of the Reformation, *fol.* 98, *&c.* whither I will refer you, only to read the Sentence of the learned Author, there pronounced againſt him. There is a later Caſe of my Lord *Strafford*, which every Body knows. I ſhall, as the beſt Account of that Matter, crave Leave to read the Words of the Parliament in the Act of Reverſal: I will not trouble you with reciting the Whole, but only read the Beginning, and ſome other Paſſages.

Whereas Thomas, *late Earl of* Strafford, *was impeached of High-Treaſon, upon Pretence of endeavouring to ſubvert the fundamental Laws; and called to a publick and ſolemn Arraignment and Trial before the Peers in Parliament, where he made a particular Defence to every Article objected againſt him; inſomuch that the turbulent Party, then ſeeing no Hopes to effect their unjuſt Deſigns, by an ordinary Way and Method of Proceedings, did at laſt reſolve to attempt the Deſtruction and Attainder of the Earl, by an Act of Parliament; to be therefore purpoſely made to condemn him upon* Accumulative *Treaſon.*----It goes on to ſhew it was carried by the Tumult of the People, and then follows----*And to the End that Right be done to the Memory of the deceaſed Earl: Be it further enacted, That all Records and Proceedings of Parliament, relating to the ſaid Attainder, be wholly cancelled, and taken off the File, or otherwiſe defaced and obliterated, to the Intent the ſame may not be viſible in After-Ages, or brought into Example, to the Prejudice of any Perſon whatſoever.* So that the Parliament that enacted that Reverſal, did conſider thoſe Proceedings as very evil and unjuſt; and was not willing there ſhould be any Remains of ſuch an Example to future Ages.

Sir, having made theſe Obſervations as to the Manner of Proceeding, I come now to that which is the Subject Matter of the Bill at preſent before you, and which we take to be the Charge againſt Sir *John Fenwick*. I muſt crave Leave to obſerve, that in all Courts of Juſtice, where any Perſon is accuſed, he is to make his Defence *ſecundum allegata & probata:* 'Tis not enough that a Matter is proved, if it be not alledged; nor that it is alledged, if it be not proved: But if it be both alledged and proved, then it is a full Charge, and requires

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quires an Anſwer. It is not only the Law of *England*, but, I believe, of all Nations; and wherever any Perſon is to make his Defence, eſpecially in Capital Crimes, that to which he is to anſwer, muſt be alledged againſt him; from whence I ſhall obſerve, what is alledged againſt Sir *John Fenwick:* For I hope we are not concerned to defend him further, than as to what at this Time he is charged with. This Bill of Attainder, as it is drawn, and now ſtands before you, doth not ſo much as alledge, or ſay, that Sir *John Fenwick* is guilty of the Treaſon whereof he was indicted; and that hath prevented us from producing Witneſſes, to that and ſeveral Matters which the King's Counſel have entered upon: For though you have permitted them to examine Witneſſes to ſeveral Things quite out of the Bill; yet I hope you are not come to any Reſolution, that theſe Matters ſhall be thought fatal to Sir *John Fenwick*, which are not ſo much as alledged againſt him. We do not therefore think we are bound, or ought to follow them in thoſe Things that are totally out of the Bill; and therefore his being guilty, is not now the Queſtion, becauſe it is not a Charge upon him.

The firſt Thing that is alledged in the Bill, is, That Sir *John Fenwick* was indicted at the Seſſions, for that which is laid in the Indictment to be Treaſon, (which by and by I ſhall crave Leave to be heard to); and I think no body will ſay, this alone does require any Anſwer, further than to own the Fact, or to deny it: And we do admit, that he was ſo indicted. I need not labour much to clear him of the Conſequence of that alone; for very often innocent Perſons have been indicted and accuſed (for an Indictment is no more than an Accuſation); and this Bill, as I have obſerved, doth not ſay he is guilty. When the Bill hath recited that Matter, it proceeds to take Notice, That he, by ſome unfair Prevarications, (for ſo I do agree they were, if the Facts alledged in the Bill are true; which, by the Way, have not been yet proved, by producing one Witneſs) did obtain the King's Clemency to put off his Trial, in Expectation of an ingenuous Confeſſion; which the Bill takes for granted he hath prevaricated in, by charging ſeveral Perſons of Honour and Fidelity with Matters of a high Nature, only by Hearſay; and by uſing other unfair Artifices to put off his Trial. How far it is made out, that I muſt ſubmit to you: We think at preſent, there is no Proof of it, and by Conſequence we are not concerned to anſwer it: But had they proved it as fully as it is laid, (though far be it from me to excuſe ſuch a Behaviour); yet, when a Criminal is to be tried for that which will be of fatal Conſequence to him, if he be convicted, no body can ſay it comes near Treaſon, by unfair Means to contrive to put off his Trial.

The next Thing the Bill recites, is, That one of the Witneſſes, who might have been produced againſt him upon his Trial, if it had proceeded as was intended, is ſince withdrawn. I cannot ſay but *Goodman* is withdrawn; but as the Bill does not ſo much as alledge, that it was by the Means, or Procurement, or Privity of Sir *John Fenwick*, ſo from thence that Part of the Bill charges no Offence home to Sir *John Fenwick:* For in Caſe the ſame Witneſs had happened to have died by the Act of God, that would not have been a good Reaſon for this Bill of Attainder againſt Sir *John Fenwick*, unleſs he had contributed to it.-----From theſe Premiſes follows the enacting Part, That Sir *John Fenwick* be attainted of High-Treaſon; and in future Times the Act muſt be ſuppoſed to be grounded upon the Inducement to it: And I humbly ſubmit it to you, whether this Bill, condemning him for High-Treaſon, upon ſuch Recitals, will be thought Reaſonable. Theſe being the Allegations of the Bill, I will now, with your Favour, come to that which they, on the other Side, do call Proofs; and I muſt humbly obſerve to you, and ſubmit it to your Judgments, Whether, in a Caſe where a Man's Life is to be taken away, by a ſubſequent Law made on Purpoſe for him, the Proofs in that Caſe ought not to be much more evident, than if he were to be tried by a Law already in being? In my poor Apprehenſion (I ſpeak it with all Submiſſion to you, Sir,) it would be too much, at once to make a ſubſequent Law to condemn a Man to Death, and to do it upon doubtful and uncertain Evidence, or rather upon no Proof at all: Nothing could excuſe ſuch a Law, but an undeniable Proof of the Fact. And, therefore, ſurely the Poſition we find of Mr. *St. John*'s, In Lord *Stafford*'s Caſe, is of moſt dangerous Conſequence. I am afraid none are ſafe if that be admitted, *That a ſubſequent Law may take away a Man's Life without any Evidence, other than the private Opinion or Conſcience of every particular Law-maker.* He is pleaſed ſo to aſſert, That it may be done, as in *Ruſhworth*'s Hiſtory of that Trial, *Fol.* 677. I am ſure if this be ſo, no Man knows how long his Life is his own: I hope this Doctrine ſhall never be followed or approved. Sir, we have the Happineſs to live under an Eſtabliſhment, that every Man does, or may, know the Law he is to go by: Every one is bound, at his Peril, to take Notice of the Laws and to act accordingly, becauſe they may be known: But at this Rate none but Prophets can live among us. In the next Place, I would obſerve, what Courſe they have taken in their Evidence who are the King's Counſel. Firſt, they have betaken themſelves to that which is not alledged in the Bill; and we think that this is not agreeable to a Courſe of Juſtice.

In the next Place, to make out that they inſiſt on, they produced but one Perſon, that comes hither *viva voce* to ſpeak to it; and I muſt take Notice to you, that he is not upon Oath. I know very well, it is not your Courſe in this Houſe, to adminiſter an Oath; yet I hope that is ſo far from being a Reaſon why this Bill ſhould paſs here without an Oath, that it is a good Reaſon why ſuch a Bill ſhould not begin here. *There is no Place in the world where a Perſon is ſentenced to Death without an Oath:* In the Caſe of my Lord *Strafford*, the Proceeding firſt was by way of Impeachment, and the Witneſſes had been firſt examined upon Oath in the Houſe of

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of Peers; and the Bill of Attainder takes Notice of it, reciting that it had been fully proved; and, by Conſequence, we may ſuppoſe, that they would not otherwiſe have paſſed it; that being the Ground of their proceeding upon the Bill of Attainder: *But for the Bill to begin originally in this Place, to form ſuch a Judgment, the heavieſt that can be pronounced againſt a Man; a Judgment of Death, corrupting his Blood, and forfeiting all he has in the World; and this upon bare Allegations, without ſo much as the Sanction of an Oath, is extremely hard.* Mr. *Porter* is ſuch a Perſon, I know not how he hath gained ſo much Credit, that this Act ſhould paſs upon his Parole, to take away the Life of a Man: He was lately of that horrid Conſpiracy to aſſaſſinate the King; and ſhall that Man, who was ſo lately of that villainous Diſpoſition, to be engaged in a Crime of that black Nature, and not convicted by his own Conſcience, but by the Danger he had run himſelf into, not ſo much as pardoned his Crime, but at this Time, if I may without Offence uſe that Expreſſion, *drudging for his Pardon*; I ſay, ſhall this Perſon's Life be taken away by his Parole?

Sir, next Thing I would go to, is, that (which likewiſe they call Evidence) which is an Examination, as they term it, of *Goodman*, taken before a Juſtice of Peace: But he was not examined; and I muſt inſiſt upon it, that though you permitted it to be read, you did not declare it to be Evidence; but you were I preſume, willing to hear all Things, and then judge what would be the Evidence; and I think the King's Counſel did not preſs it further. Sir, as this is not Evidence that would be allowed in an inferior Court, ſo, I hope, you will not allow it to be Evidence here; for then it is likely to be followed by other Courts, whe obſerve the Proceedings here as their great Rule. 'Tis only what Mr. *Goodman* thought fit to write down, without being examined.-----Sir, the next Thing they reſort to, is, what *Goodman* ſwore upon his Examination in another Cauſe, where Sir *John Fenwick* was neither Party, nor preſent: Sir, there are, I ſuppoſe, ſuch Reaſons againſt that Sort of Evidence, from natural Juſtice, that it is not admitted in any Court; becauſe there may be a weak Defence; or the Perſon that ſwears it againſt one, perhaps may not, when Face to Face, have the Confidence to perſiſt in it, in caſe it be falſe againſt another; or, at leaſt, that Perſon, who was not a Party before, when he comes upon his Trial, may think of ſuch Queſtions as may go a great Way to diſcover the Truth, may produce ſuch Evidence againſt his Credit as may overthrow it.

But if what is ſworn at one Time againſt one Man, muſt be always taken for Truth againſt all others, then the Trial of one of the Company is the Trial of all the reſt: And how contrary is this to a fundamental Rule in our Law, that no Evidence ſhall be given againſt a Man, when he is upon Trial for his Life, but in the Preſence of the Priſoner; becauſe he may croſs-examine him who gives ſuch Evidence, and that is due to every Man in Juſtice

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But I would, with Submiſſion, enquire, how they are ſure that *Goodman* would have ſworn this Matter again, if he was now forth-coming? Becauſe he did ſwear ſo in *Cook*'s Caſe, is it neceſſary that he ſhould ſwear ſo again now, if Face to Face with Sir *John Fenwick?* No body can ſay ſo, poſitively and abſolutely; they only can imagine it, becauſe he once ſwore it, that it is poſſible he would do ſo again: Whereas we may as well ſay, he did then ſwear to ſave his own Life; and having done that, and found an Opportunity to get out of the Way, his own Conſcience might put him upon Flight to prevent his doing of it again; and that might be the Reaſon for the withdrawing himſelf. However, I inſiſt upon it, That there is no Proof that it was by the Procurement of Sir *John Fenwick:* The Bill does not alledge it, and the Proofs do not come up to it; nay, there is nothing offered to ſuch Purpoſe, ſave only that Mr. *Porter* was pleaſed to ſay, That another Man told him, that the three hundred Guineas he was offered, and three hundred more he was to have received, were to have come from Sir *John Fenwick:* But hearſay Evidence is to be rejected, eſpecially againſt a Man for his Life, becauſe every Man is at Liberty to talk at large: But God forbid that That ſhould be allowed for Evidence.

The next Thing they went upon was, what Mr. *Roe* ſaid; That Mr. *Dighton*, who, by your Permiſſion, is Solicitor for Sir *John Fenwick*, was enquiring of him, what he could ſay to take off *Goodman*'s Evidence; the Words, I think he uſed, were, what he could ſay to diſcredit *Goodman*'s Evidence; and, I hope, that does no way affect Sir *John Fenwick:* For it does not appear that he had any Authority from him; but 'tis only ſuſpected, becauſe he is now Solicitor for him, which he was admitted to after the Time ſpoken of. But I take the Words to be nothing relating to *Goodman*'s withdrawing himſelf; but to enquire what he could ſay to diſcredit his Teſtimony, which ſuppoſes he would appear, and imports the quite contrary to withdrawing himſelf: And if he had gone no further, I think there had been no Fault in that; for any Solicitor may enquire up and down for the Advantage of his Client; and the Word Solicitor imports his Employment. As to the Offer Mr. *Roe* ſays he made him, of a very great Recompence, how far he is guilty of that, I ſuppoſe he can give ſome Account, if you ſhould pleaſe to enter into the Examination of it; and, as I find, he does not doubt to clear himſelf: So that Sir *John Fenwick* is in no Sort proved to be privy to Mr. *Goodman*'s withdrawing himſelf, much leſs to be proved to have had a Hand in it.

There is one Thing more I would offer and that is grounded upon the Bill of Indictment, preferred at the *Old-Baily* againſt Sir *John Fenwick*; That the Matter in the very Indictment that they have read on the other Side, as it is there laid, and as far as it hath been offered to be heard, does not amount to Treaſon; or, at leaſt, it hath been made a a very great Doubt, and by ſome within theſe Walls; but this I offer with all Submiſſion:

I have

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I have the Author in my Hand, who is a Perſon of Note of the King's Counſel; he hath furniſhed me with ſuch Arguments, as, I hope, I may be permitted to put you in Mind of without Offence.

The Indictment lays, That there was a Conſpiracy and Agreement to call in a foreign Power, and to that Purpoſe to ſend *Charnock* to *France*; but the Indictment does not ſay, That *Charnock* was ſent, only that there was a Meeting, and an Agreement, and a Conſpiracy to ſend him: So the Indictment does not lay it as a Thing done, nor does the Bill charge it ſo; but only takes Notice, that Sir *John Fenwick* was indicted for conſpiring, and agreeing to call in a foreign Force: So that this Bill does not ſay that *Charnock* was ſent; and I appeal to you, whether it be proved that he was ſent: For Mr. *Porter* ſays no more, but there was a Meeting at the *King's-Head*, and he named Sir *John Fenwick* to be one that was preſent; and there it was, he ſays, agreed, That *Charnock* ſhould be ſent to *France*. Now, if there was nothing more than an Agreement and Conſpiracy to do it, and no further Act, but ſuch a Meeting to do it, and the Perſon was not actually ſent, or at leaſt not proved to be ſent; then, from this learned Author's Opinion, I inſiſt upon it, that this is not a ſufficient Overt-Act of Treaſon. In the late Caſe of my Lord *Ruſſel*, whoſe Innocence is vindicated by this Author, he takes Notice, That a Conſpiracy or Agreement to levy War is not Treaſon, without actual levying War; and of that Opinion was my Lord *Coke*, and my Lord Chief Juſtice *Hales*. A Conſpiracy or Agreement to call in foreign Forces, unleſs actually done, or a Perſon at leaſt actually ſent, or ſomething more than a bare Agreement for that Purpoſe, is the ſame as a Conſpiracy to levy War: And in the Caſe of my Lord *Ruſſel*, the Proof being only, That he and others met together, and agreed to ſeize upon the Guards and levy War, which he never actually did; it is inſiſted upon by this Author, That that was not Treaſon; for that Indictment went no further: And therefore my Author ſays, *Shew me where ſuch an Accuſation was ever agreed to be more than a Conſpiracy to levy War, and that ſuch a Conſpiracy was ever agreed to be Treaſon within the Statute of* Edw. III. *till within theſe few Years.*

Sir, now I muſt humbly ſubmit it to you, Whether this be any Thing more? And for the Purpoſe you will pleaſe to conſider, What this preſent Bill, and what that Bill of Indictment is: For it is not, for that *Charnock* was ſent to *France* to ſolicit foreign Forces, but only that Sir *John Fenwick* was at a Meeting where they did agree ſo to do. Calling in foreign Forces is levying War; but a Conſpiracy to levy War is not Treaſon, unleſs it be actually done: A Conſpiracy to call in foreign Forces is nothing more. And therefore, I humbly inſiſt upon it, That neither by this Bill, or by the Indictment recited in it, or the Proofs offered before you, any Thing is charged, but only an Agreement at that Meeting, (mentioned by Captain *Porter*, a ſingle Perſon, and he not upon Oath), to call in foreign Forces; for he only ſays, That *Charnock* told him he had been in *France*. I ſhall not trouble you any further. We have not thought fit to produce Witneſſes, for the Reaſons I have offered; for that we do not find that Sir *John Fenwick*, throughout the Bill, is charged with being guilty of Treaſon; and we are not willing to enter upon the Defence of a Matter not charged upon him. I hope, Sir, you will not make a Precedent, That where a Perſon is indicted, and ready to abide his Trial in the ordinary Courſe of Juſtice, as Sir *John Fenwick* now is, that he might be taken out of the Hands of the ordinary Judges, and be brought to this Bar, to receive his Trial here.

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A Matter of this Nature may be of very great Conſequence: We know at preſent upon what Ground we ſtand; for by the Statute of *Edw.* III. we know what is Treaſon; by the two Statutes of *Edw.* VI. and the late Act of Treaſon, we know what is Proof; by the Statute of *Magna Charta*, we know how we are to be tried, *per legem terræ, & per judicium parium*; that is, a Peer by his Peers, and a Commoner by a Jury: But if Bills of Attainder come into Faſhion, *we ſhall neither know what is Treaſon, what is Evidence; nor how or where we are to be tried.* Sir, I ſubmit it to you, and hope this Bill ſhall not paſs.

Sir Bar. Shower's *Argument for the Priſoner.*

Sir *Bartholomew Shower*, who was Counſel alſo for Sir *John Fenwick*, ſaid, He ſhould not enter into any Debate or Argument concerning the Power of Parliaments: No doubt there was a Supreme Power in all Governments, and by our Conſtitution it was lodged in the King, Lords, and Commons: He admitted alſo, that there had been many Attainders; but not one, he obſerved, for a ſingle Act that was Treaſon at Common Law: That they might obſerve the Statute of the 25th of *Edw.* III. reſerved a Power to the Parliament, to proceed upon Treaſons *not expreſſed there*; but as to the Compaſſing the King's Death, Levying War, and Adhering to his Enemies; it ſeemed to be the Senſe of the Parliament, to leave theſe to the Rule of the Common Law: He did admit, indeed, *ſalus populi*, the Safety of the State, to be the Supreme Law; but this Proſecution being for an Act done laſt *May* was twelve Months, the Danger paſſed, and the Conſpirators executed, and no Fears now remaining from that Conſpiracy; he hoped they would not reſort to their extraordinary Legiſlative Power to puniſh ſuch a Fact, which might be puniſhed by the ordinary Rules of Law: The moſt they could do, in Juſtice, was, to ſupply the Want of the abſent Witneſs, and enact, that *Goodman*'s Depoſition ſhould be read at the Trial; but he hoped they would not think fit to condemn Sir *John Fenwick* without Trial, and put him in worſe Circumſtances than he would have been if *Goodman* had not been withdrawn; eſpecially ſince it was neither charged nor proved that *Goodman* was withdrawn by Sir *John*'s Procurement: Nay, it was not proved that *Goodman* was withdrawn at all; he might be ſtill in his old Lodgings, and ſhould he appear again, and contradict the Teſtimony he had given, it might then be too late to do Juſtice to Sir *John Fenwick*.----That as to the Overt-Acts, of buying Horſes and Arms, laid in the Indictment, none of theſe had been

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proved, nothing but his being at a Conſult; and in my Lord *Ruſſel*'s Caſe, there was not only a Conſult to ſeize the Guards, laid as an Overt-Act of Treaſon, but it was proved Sir *John Armſtrong* was ſent to view the Guards, in order to ſurprize them; and yet the Act for reverſing the Lord *Ruſſel*'s Attainder, declared he was unlawfully convicted, upon ſtrained Conſtructions of Treaſon; and he obſerved, that the conſulting to attack the King's Guards, and the inviting over foreign Forces, were either of them Conſults to levy War; and if the one was not Treaſon, neither was the other: And as to the Treaſon of adhering to the King's Enemies, with which Sir *John Fenwick* was charged, he muſt either have been preſent, aiding and abetting them, or ſent them Arms, Ammunition, Money, or other Supplies, to have brought him within that Branch of the Statute: That here was not ſo much as the ſending to *France* proved, only an Agreement to ſend one. He deſired the Houſe would take it into their Conſideration, alſo, That Sir *John* might undergo another Trial, if he ſhould be acquitted here: The King's Counſel might proſecute him at Common Law, if this Bill ſhould be thrown out; and it was contrary to all Laws, that a Man ſhould be brought in Danger of his Life twice for the ſame Fact; and for theſe Reaſons, and thoſe already offered by Sir *Thomas Powis*, he hoped they would not proceed againſt the Priſoner in their Legiſlative Capacity.

Mr. Serjeant Gould's *Argument for the Bill.*

Mr. Serjeant *Gould*, in his Reply to the Priſoner's Counſel, obſerved, That they had admitted it was proper to apply to the Parliament in extraordinary Caſes; and this was ſuch a one; for they had been deprived of the Evidence that was neceſſary in the ordinary Courſe of Proceedings: And in Anſwer to that Objection, That the Evidence they had produced was not legal Evidence, they were now before the Parliament, which would make uſe of ſuch Informations as might give them any Light into the Matter: They were Judges of their own Methods, and how far Sir *John Fenwick* was concerned, upon the Circumſtances before them: And as to the Objection, That this was a Power which had been ſeldom exerted, but when the Party was withdrawn from Juſtice, and could not be come at otherwiſe; this, he inſiſted, was a parallel Caſe: They could not come at Juſtice in the ordinary Courſe, their Witneſs having been tampered with; and therefore, by their own Arguments, it was proper to come before the Parliament.

Mr. Serjeant Lovel's *Argument.*

Mr. Serjeant *Lovel*, being alſo Counſel for the Bill, ſaid, Mr. Speaker, I ſhall not trouble you nor the Houſe very long; but I humbly hope, with a little Pains, to ſatisfy the Houſe, that moſt that hath been ſaid on the other Side, is not much to the Purpoſe: Sir, I will conſider, with the Leave of this Houſe, what the Common Law was before the 25th of *Edw.* III. and how the Law does now ſtand; and draw ſome Conſequences from thence, and the Neceſſity of this Caſe.

The Statute of the 25th of *Edw.* III. I muſt obſerve it, is not an enacting Law, it is only a Law declaratory; for all thoſe particular Inſtances of Treaſon that are mentioned there, were Treaſons before that Law was made, and ſo, by the Preamble of it, plainly appears: But the Judges had a greater Liberty upon conſtructive Treaſons, and upon accumulative Treaſons; and that was left too much at the Diſcretion and Liberty of the Judges below, and the executive Power of the Law. Then that Statute comes and reſtrains the Judges in that Point; and ſays, That they ſhall not give Judgment in any Caſes of Treaſon, but only in theſe Caſes particularly mentioned there: And that Statute ſays, That if any other Matter, which ſhall be thought Treaſon, ſhould come before them, they ſhall not proceed to Judgment, but acquaint the King in Parliament with it. I only make uſe of it to prove how Treaſon ſtood before that Act, and how it comes to be altered from the Common Law; and I am ſure it cannot be denied, but that one Witneſs was ſufficient at the Common Law: But then comes 1 *Edw.* VI. *cap.* 12. and that, for the Security of the Subject does ordain, That in Caſes of High-Treaſon, there ſhall be two Witneſſes of the Fact: But that Statute does not alter the Law, but was made for the more Security of the Subject in Point of Proof. In that Statute of 1 *Edw.* VI. *cap.* 12. it is provided, There ſhall be two Witneſſes in Caſes of High-Treaſon; but there is an Exception of Treaſon, for counterfeiting and forging of the Coin; and that is the Reaſon that the Law is taken now, That though there muſt be two Witneſſes in the Caſes of other Treaſons, yet in the Caſe of Coining there needs but one. The Offence or Crime is never the greater, becauſe there are to be two Witneſſes to prove it. In this Caſe that is here before you, we come to deſire your Help, becauſe one of the Witneſſes is, by Art and fraudulent Means, withdrawn: Does that purge the Crime at all, or leſſen it? No Man will ſay the Crime is leſs; but it does prevent a regular Trial before the Courts below, and that is the Reaſon why we did come here; and we hope this Defect ſhall be ſupplied by a ſpecial Law: But, ſay they, 'tis very hard a Law ſhould be made *ex poſt facto*, to take away a Man's Life. It would be very hard, if the Caſe was as they have ſtated it, to make a Crime, *ex poſt facto* that was not ſo before: But I do not take it to be hard for a Law to be made to repeal another, to make a Matter triable that was not triable before.

Suppoſe a Law ſhould be made, That all Treaſons, from and after ſuch a Time, ſuppoſe from a Time before the Fact is here ſuppoſed to be committed, as laſt *May* was twelve Months, ſhould be triable as at the Common Law, no doubt the Paliament may repeal a Law in Part, or in All: No Man can ſay, but Sir *John Fenwick* might be tried at the Common Law by one Witneſs before the Statute of 1 *Edw.* VI. So that I do obſerve, and humbly ſubmit it to you, That this Law, by the Act, is not changed as to the Crime: The Crime is as it was before; it is only changed as to the Number of Witneſſes. The Inſtances that have been obſerved on the other Side, with humble Submiſſion, I think, do not reach our Caſe: We do not inſiſt that there are two

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legal Witneſſes; we do confeſs, the Information that hath been read is not a legal Proof; but this Houſe, in their Legiſlative Capacity, is not to be confined to the Evidence that a Jury muſt have below: This Houſe may take what Ways and Methods they pleaſe, to ſatisfy themſelves. Say they, here is the Life of a Gentleman that is concerned; I know all good Men will be tender of the Life of a Man: But here is the Life of the King, and the Safety of the Kingdom, the Peace and Safety of us all, that is concerned in the ſame Caſe; and let them put theſe Things into the Ballance, and conſider which ought to weigh moſt.

You have a Record before you of the Conviction of *Peter Cook*, who was indicted by the ſame Witneſs.

A learned Gentleman, that is of Counſel for the Priſoner at the Bar, did make the ſame Objections as are made now, at the *Old-Baily*, (it may be there are ſome other Particulars now); and after all the Debates and Arguments that could be uſed at that Time, it was unanimouſly reſolved, That the Crime was High-Treaſon: And if it was High-Treaſon in *Peter Cook*, 'tis no leſs in Sir *John Fenwick*, who was preſent at the ſame Time, and engaged in the ſame Buſineſs: For what was a Crime in one, was the ſame in both.

I think it is too determinative an Expreſſion to ſay, This was nothing but a little Twittle Twattle. They did there meet upon a ſolemn Conſultation; and not only once, but they did meet a ſecond Time: And what was it to do? It was to invite a foreign Power to invade this Land, and to make War with the King and Kingdom; and they did promiſe and ſolemnly engage to aſſiſt them with armed Forces; and it was proved, that they did agree with *Charnock* to go into *France*; and *Charnock* was not willing to go the firſt Time he was deſired, till he found they were ſtanch and ſteady in their Reſolutions; and upon a ſecond Meeting they were all found ſo, and then he would go: I think that is an Overt-Act of Treaſon, if there be any. And when he came back, he ſaid, he had been in *France*, and brought an Anſwer to the Meſſage he went about: This is all now laid before you. But, ſay they, this is an extraordinary Caſe: I do agree to it; but becauſe it is an extraordinary Caſe, and for the Safety of the King and Kingdom, it is fit there ſhould be an extraordinary Remedy.

They ask, What Miſchief it would be, if this Gentleman ſhould be left to the ordinary Courſe of Law? It hath been the Wiſdom of all Ages to make Laws to puniſh ſuch as by their Artifice would evade the Law. Here is this Gentleman, as we ſay, guilty of High-Treaſon; but that we ſubmit to you.

This Gentleman was in the Proſecution of the Law, and might have been tried in the regular Way, had we the Witneſſes upon their Oaths (the Grand Jury have found *Bill a Vera* upon their Oaths); but we muſt appeal to a worthy Member of the Houſe, (who becauſe he was a Member we did not call upon him), to give you an Account how he did delay and protract his Trial; and now they know he can't be tried at all, they pretend he is willing to be tried; and becauſe he cannot be tried, they would have it as an Argument that he ſhould not be puniſhed by any other Means.

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Sir, If ſo notorious a Crime as this is, ſhould be committed againſt the Body of a Nation, and go unpuniſhed, either in the common Courſe, or by ſome extraordinary Methods, the Nation would be in a doubtful and dangerous Caſe.

When this Houſe hath paſſed their Judgment in this Matter, it will go to another Place, where it will have another Examination; and it will have that regular Conſideration that all other Acts have. We are in an extraordinary Caſe; and do think, that this extraordinary Caſe does deſerve an extraordinary Puniſhment. After which, the Counſel were ordered to withdraw.

The Gentlemen, charged by Sir John, *move, he might prove the Charge.*

Sir *John Fenwick* and the Counſel being withdrawn, Admiral *Ruſſel* moved, that Sir *John* might be called in again, and asked, What Proof he had, that he (the Admiral) ſent Captain *Lloyd* to *France*, and was guilty of the other Facts mentioned in the Paper he ſent to the King?

Then Colonel *Crawford* for himſelf, Colonel *Godfrey* for the Lord *Marlborough*, Mr. *Bridges* for the Duke of *Shrewsbury*, Mr. *Boſcawen* for the Lord *Godolphin*, and Colonel *Granvill* for the Lord *Bath*; deſired Sir *John* might be asked, What Proof he could make of the Facts, he had charged them with reſpectively in the ſaid Paper?

Another Member moved, That he ſhould be asked in general, what Proof he had of the Particulars in that Paper? But at length it was agreed, that the Paper ſhould not be produced; and that they ſhould only ask him upon every Name in that Paper, in the Order they were mentioned there, What he knew of that Gentleman? And accordingly, Sir *John* and his Counſel were called in again, and Mr. Speaker demanded of him, What he knew of the Lord *Godolphin* (being the firſt Perſon mentioned in the Paper)? To which Sir *John* anſwering, He hoped they would not put him upon anſwering any thing that might hurt himſelf, he was ordered to withdraw.

Sir John *refuſes to anſwer on that Head.*

Then it was moved, That Mr. *Vernon* might give an Account of Sir *John*'s Practices, to get his Trial put off from Time to Time, on Pretence of making a Confeſſion; This being one of the Allegations in the Bill, of which no Proof had been made: And it being agreed, that this ought to be done in the Preſence of Sir *John* and the Counſel, they were called in again: And Mr. *Vernon* related, that the Lady *Mary Fenwick* had applied to him to get Sir *John*'s Trial put off, on Pretence of his making Diſcoveries; and that ſeveral of the Miniſtry had attended Sir *John*, on his Promiſes of making a full Confeſſion; but that he had only amuſed them from Time to Time, till *Goodman* was gone.

Mr. Vernon *relates the Endeavours uſed by Sir* John *to put off his Trial.*

After which Mr. Speaker demanded of Sir *John*'s Counſel, If they had any thing to obſerve upon that Head?

The Obſervations of his Counſel upon it.

Sir *Thomas Powis* anſwered, He did not find there was any Degree of Treaſon in this Part of the Charge; and what Crime they would

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would conſtrue it, he could not tell: That it was uſual for Perſons, under an Accuſation, to endeavour to put off their Trial, on Account of the Abſence of their Witneſſes, or for other Reaſons: But this was no Crime; at leaſt, not of the Nature the Bill charged.

Sir *Bartholomew Shower* added, If Sir *John* had prevaricated, as they called it, he hoped that was far from making him guilty of High-Treaſon; and that if this was an Offence, it was ſo at Common Law, and he might be puniſhed for it by common Methods: And if it was no Offence, he hoped they would not make it an Offence by a new Law, ſo as to inflict the greateſt Puniſhment for ſuch an Artifice.

The Priſoner and Counſel being withdrawn, the Bill was read a ſecond Time, after which there was a profound Silence: Whereupon Mr. Speaker demanding, If he ſhould put the Queſtion of Committment? a Debate aroſe, which was begun by Sir *Thomas Dyke*, who ſaid, He hoped he would not put the Queſtion of Committment, till ſome Exception was made to the Bill; for he was ſure it was as liable to Exceptions, as any Bill that had been brought in a great while.

A Debate on the ſecond reading of the Bill.

But, as it is not conſiſtent with a Work of this Nature, to give every Speech that was made during this Debate, I ſhall firſt ſum up the Arguments impartially on both Sides; and then ſelect ſome few of thoſe Speeches, I apprehend may give moſt Satisfaction to the inquiſitive World.

Arguments for the Bill.

The Gentlemen who were for the Bill, ſaid, That the Parliament would never take a Cauſe from the ordinary Courts of Juſtice, or attaint a Perſon of High-Treaſon, unleſs in extraordinary Caſes: But here, it appeared, they had been deprived of the Evidence that was neceſſary in Inferior Courts; and, in ſuch a Caſe, it was uſual for the Parliament to interpoſe: For the Parliament were not bound down by what was called legal Evidence; but might make uſe of any Information that could give them any Light into the Matter: They were Judges of their own Methods, and could paſs a Judgment on Sir *John Fenwick*'s Guilt, from the Circumſtances before them; and were not tied down by the Rules of *Weſtminſter-Hall:* That this Power indeed had been ſeldom exerted; but where the Party was withdrawn from Juſtice, and could not be come at in the ordinary Courſe: But this was a parallel Caſe; they could not come at Juſtice in the ordinary Courſe, their Witneſs having been tampered with and withdrawn; and therefore, from what was admitted on the other Side, the Parliament ought to exert their Power, when the Offender could not be come at otherwiſe. This Caſe was proper to be brought before the Parliament, which was veſted with a diſcretionary Power, to do whatever they apprehended for the Good of the Kingdom; and this they looked upon as a fit Occaſion to exert that Authority: That, indeed, this Power was like Thunder in the Hands of Providence, not to be uſed but upon extraordinary Occaſions; and then it never ought to fail of doing Execution: For Men would trifle and contemn that Power which was not able effectually to exert itſelf. Some Gentlemen were afraid of making an ill Precedent; but it was for that very Reaſon others were for paſſing the Bill: For as the Law ſtood, he was but a bungling Politician, that could not ruin the Government, and yet not come within the Bill of Treaſon to be hanged for it: And therefore, for the keeping Miniſters of State in Awe, and that the Parliament might have it in their Power to puniſh ſuch Offenders as they ſaw fit, as well as the Priſoner, they were for the Bill.

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It had been objected indeed, That Sir *John Fenwick*'s Life was not of that Conſequence as ſome pretended: He was not ſo conſiderable, that his Eſcape could bring any Danger to the Publick. But it was a very juſt Obſervation, That if a Plot was diſcovered, and not throughly proſecuted, it would ſtrengthen and grow upon the Adminiſtration; and it was ten to one, but the Government was ſubverted by the Conſpirators in the End. That no one could imagine, that Sir *William Perkins*, Sir *John Freind*, and the reſt that had been diſcovered, were the only Perſons concerned in this Conſpiracy; there muſt be much greater Men concerned in it: And when they ſaw ſuch a Struggle to get People out of Jayl, and ſend them out of the Way, they muſt ſuppoſe there was ſomething extraordinary ſtill to be done: And they would not have Men think to ſecure themſelves by bribing and tampering with the Witneſſes. It was notorious that Parties were forming for King *James*; Perſons were plotting in every Part of the Kingdom, and an open Invaſion threatened: And, if this was not a Time to exert their extraordinary Power, when would it be a proper Time? - - - - -

Others obſerved, That if the Laws of God and Nature required, that no Man ſhould be put to Death without two Witneſſes, it was ſtrange that all Chriſtian Nations were not governed by ſuch Laws: But in Fact, no two Nations agreed in their Manner of Proof; and we differed from all other Nations, in bringing the Witneſſes and the Priſoner Face to Face; and requiring two Witneſſes in Caſes of Treaſon: Nor did we ourſelves, require the ſame Proof in ſome Caſes as we did in others; for one Witneſs was ſufficient in Felony: And before the Statute of *Edward* VI. any Evidence was ſufficient, even in Treaſon, which was ſufficient to incline the Jury to give a Verdict: And for the Treaſon of coining ſuch Evidence was ſtill ſufficient. That if this Precedent had been made in the Caſe of an innocent Perſon, or even where the Fact was doubtful, by a prevailing Party, it had been an ill Precedent: But it being made for a Man that was notoriouſly guilty, and one who deſerved this extraordinary Reſentment of the Nation; and who would have been brought to Juſtice in the ordinary Manner, if he had not eluded it, and made it impracticable; they thought, if it ſhould appear, that the Nation would not be put off ſo, but made an Example of him, Poſterity would applaud and thank them for it. They did not however condemn him, becauſe he had protracted his Trial; but becauſe he had been guilty of High-Treaſon, the worſt of Treaſons; which would have been proved againſt him in the ordinary

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Way of Proceedings, if he had not pretended to make Diſcoveries, and by that Means put off his Trial till a Witneſs was gone; and when he found himſelf out of the ordinary Reach of Juſtice, ſet the Juſtice of his Country in Defiance: And if theſe were not ſufficient Reaſons to put him to Death, yet they were ſufficient to juſtify their Proceeding againſt him in this Manner. And notwithſtanding Sir *John* was repreſented as too inconſiderable to indanger the Government; it appeared he was to have been a General, and was acquainted with a great many Officers: That he had not made an Attonement to his injured Country, as he ought to have done, by an ingenuous Confeſſion; and unleſs they proceeded ſteadily againſt him, they ſhould have none of the Diſcoveries they expected. Not that they would hang a Man becauſe he would not confeſs; but, becauſe he had been guilty of the deepeſt Treaſon, and aggravated his Offence in that Manner, he deſerved to die; unleſs he would merit his Life by a Diſcovery of what he knew.

Arguments againſt the Bill.

On the other Hand, the Gentlemen who argued againſt the Bill, inſiſted, That the Perſon they intended to condemn by this Bill was forth coming; He had been indicted, had pleaded, and was ready to undergo his Trial in the ordinary Courts of Juſtice: That the meaneſt Subject was intitled to a Trial by Jury: Even the Regicides who actually murdered the King, and did not fly, were admitted to a Trial in the ordinary Courts of Juſtice, though a Bill of Attainder paſſed againſt the reſt: And it muſt be thought ſtrange, that the ſame Parliament, which paſſed an Act requiring two Witneſſes in Treaſon, ſhould paſs an Act to put a Man to Death without one legal Witneſs, and without allowing him any Trial at all. If Mr. *St. John*'s Poſition in Lord *Strafford*'s Caſe was admitted, *(viz.) That a ſubſequent Law might be made, to take away a Man's Life, without any Evidence, other than the private Opinion or Conſcience of every particular Law-maker*; then no Man was ſafe. In the Lord *Strafford*'s Caſe, the Proceedings were firſt by Impeachment: The Witneſſes had been examined upon Oath in the Houſe of Peers; and the Bill of Attainder recited, that the Facts had been fully proved: But for a Bill to begin originally in the Houſe of Commons; and Judgment to be given there to deprive a Man of his Life, and all that was valuable, without the Sanction of an Oath, was extremely hard.----- That Biſhop *Burnet*, in his Hiſtory of the Reformation, had obſerved, *That ſuch Bills could not be enough condemned*; *for that they were a Breach of the moſt ſacred and unalterable Rules of Juſtice.* Had the Government been in Danger from the Priſoner, indeed ordinary Rules might have been diſpenſed with: But this being for an Offence committed a Year before, the Perſons executed, who were concerned in it, and all the Danger over, there could be no Manner of Reaſon for reſorting to their Legiſlative Power to puniſh this Man: The moſt that could be thought reaſonable in this Caſe, would be, to enact, That *Goodman*'s Evidence, the Witneſs who was fled, ſhould be read at his Trial: They could not condemn the Priſoner, and thereby put him in a worſe Condition than if *Goodman* was here; for then he would have had a Trial by a Jury, the Benefit of his Challenges, the Witneſſes ſworn, and might have made his Exceptions to their Teſtimony; all which he was deprived of here: That the Parliament had Power to make ſuch a Law, was admitted; but they thought it ought not to be uſed but upon extraordinary Occaſions, when the Offenders were ſo big, that they could not otherwiſe be brought to Juſtice; or where the Crimes did not fall under the Denomination of the Common Law, which was not the preſent Caſe: That there was not one Precedent for attainting a Perſon who was in Cuſtody and forthcoming; but what had been univerſally branded: They were rather Reproaches to the ill Reigns they were made in, and to be marked out as Rocks to be avoided, than Patterns to be imitated: That though it was true they were not tied up by the Rules of *Weſtminſter-hall*, yet what was Reaſon and Juſtice in *Weſtminſter-hall* was ſo every where elſe; and ſo far as thoſe Rules were founded on Reaſon and Juſtice, they ought to be imitated: That they had indeed made a Law to prevent People's being executed by an arbitrary Power, and in an unlawful Manner in *Weſtminſter-hall*; but if they made this Example, the Subject might be perpetually executed here, and would be never the ſafer for the Bill of Treaſons: That after this Precedent, every Man would be in Danger of being proceeded againſt in like manner, we had ſeen Parties hang one another by Turns, with great Violence. Some Gentlemen indeed had ſaid, they did not aim at the Priſoner's Blood, but at his Confeſſion; and ſo he was to be racked to Death from one reading of the Bill to another, and poſſibly might come to be hanged at laſt, not for High-Treaſon, but for not confeſſing it. As to the Safety of the Government, which was pretended, they did not ſee how the Safety of the Government depended upon his Life; or that it would be a Penny the worſe if the Bill did not paſs: The Preamble to the Bill for attainting the Duke of *Monmouth* gave a ſubſtantial Reaſon for it, *That he was in Arms and could not be brought to Juſtice*; which implied, that if he could have been brought to Juſtice, they would not have attainted him: They did admit indeed, where the Government was at Stake, and nothing could preſerve the Kingdom but breaking through the ſettled Forms, there the Government might, and in all ſuch Caſes would, break through them, whatſoever Rules were preſcribed; but they did not think Sir *John Fenwick*'s living or dying of that Conſequence as the paſſing this Bill of Attainder was. As to the Allegation of his having protracted his Trial, it was natural, and what every Body in ſuch Circumſtances attempted, and could not be a ſufficient Ground to attaint him: And as to his being inſtrumental in withdrawing the Evidence, this was neither proved, or ſo much as ſuggeſted in the Bill; and if it had, did not demand ſo ſevere a Puniſhment, any more than his having aſperſed ſome great Men as the

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Bill charged: That it was true, he had charged ſome Gentlemen, and it was very hard they ſhould ſit as Judges on the Perſon who accuſed them, and endeavoured to baffle his Evidence, by cramming a Bill of Attainder down his Throat: And there were other Gentlemen in the Houſe who were the King's Counſel and Proſecutors; and it was hardly agreeable to Juſtice, that theſe ſhould ſit in Judgment on the Priſoner: That High-Treaſon indeed was a great Crime, but what was there in this Caſe to make it differ ſo much from other Treaſons, that they muſt proceed in this extraordinary manner? He had aſperſed great Men, he had prevaricated with the Government, and protracted his Trial till a Witneſs was withdrawn: But if theſe Reaſons were ſufficient to induce them to have recourſe to a Bill of Attainder, then whenever there ſhould be but one Witneſs for the future, by Virtue of this Precedent, the Legiſlature muſt interpoſe, and a Bill of Attainder be brought in. True it was, this might ſufficiently convince Men that they could never be ſafe, how artful ſoever they were in practiſing againſt the Government: But then, what Security to the Subject were all the Laws made for regulating Trials in Caſes of Treaſon? If when there was but one Witneſs, and perhaps not one, the Perſon accuſed might be taken out of the ordinary Courts of Juſtice and condemned to die, becauſe common Fame had declared him guilty: And if *Goodman*'s Paper, who was withdrawn, was to be admitted as an Evidence, before the Houſe, the Conſequence of that would be, that if a Miniſter of State could hereafter get an Examination ſworn before a Juſtice of Peace, and then ſend the Witneſs away, a Bill of Attainder might be clapped on the Back of the Party accuſed, and this ſhould be deemed ſufficient Evidence to deſtroy him: If after this Precedent, forty Men ſhould be taken up for a Plot, and there ſhould be two Witneſſes againſt twenty of them, and one againſt the other twenty, then a Bill of Attainder muſt be brought in to condemn the latter without legal Evidence: And if this was to be the Method of proceeding for the future, Men would be more unſafe than they were before the Acts of Treaſon were made, inaſmuch as Parliaments were as liable to be influenced as Jurors, and their Power was irreſiſtable.

That moſt of the Attainders which had been produced as Precedents had been reverſed; becauſe the Perſons condemned had not had the Benefit of the Law, and if that was a good Reaſon for reverſing ſuch Attainders, it was a good Reaſon alſo why they ſhould not proceed by Attainder: And to tell them the Government was in Danger, and that the Fate of *England* and *Europe* depended on this Bill, was certainly offered, rather to amuſe than convince them; it was impoſſible the Government could be in Danger from one they had in their Power, and might reſtrain him of his Liberty for Life, and whoſe Eſtate and Intereſt were ſo inconſiderable. It was ſtrange, the Government could not ſupport it ſelf without taking away the Life of ſuch a one, contrary to the Rules of Law.

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The Bill paſſed on the ſecond reading, with an Amendment.

Theſe Debates having continued till eleven at Night, the Queſtion was put, *That the Bill be committed*, which paſſed in the Affirmative, *Ayes* 188, *Noes* 121: But the Committee made an Amendment, by adding the following Words to the Bill, *viz. Of which Treaſon Sir* John Fenwick *is guilty.*

The Bill being read a third Time on the 25th of *Nov.* 1696. ſeveral Speeches were made for and againſt it; but the preceeding Abſtract contains the Subſtance of theſe as well as the former.

Read a third Time, and paſſed the Commons. Paſſed the Lord by a Majority of five. Proteſts of the Diſſenting Lords.

The Queſtion being afterwards put, *That the Bill do paſs*, it was carried in the Affirmative, *Ayes* 189, *Noes* 156: And then the Bill was ſent up to the Houſe of Lords, where it was paſſed by a Majority of five Lords only, excluſive of the Lords Spiritual, who did not vote, and ſeveral Peers entered their Proteſts againſt the Bill for the following Reaſons; 1. becauſe Bills of Attainder againſt Perſons in Priſon, and who are therefore liable to be tried by Common Law, are of dangerous Conſequence to the Lives of the Subjects, and may tend to the Subverſion of the Laws of the Kingdom. 2. Becauſe the Evidence of Grand Jurymen of what was ſworn before them againſt Sir *John Fenwick*, as alſo the Evidence of the petty Jurymen in another Cauſe, was admitted here, both which are againſt the Rules of Law; and beſides thoſe Jurymen diſagreed in their Teſtimony. 3. Becauſe the Information of *Goodman* in Writing was received, which by Law could not be admitted, and the Priſoner on Account of his not being brought Face to Face, as the Law required, could not have the Advantage of croſs-examining him; nor did it appear by any Evidence, that Sir *John Fenwick*, or any others employed by him, had tampered with *Goodman*, or perſwaded him to withdraw, and it would be of dangerous Conſequence, if a Perſon ſo accuſed ſhould be condemned; for by this Means, a Witneſs that was inſufficient to convict a Man, ſhould have more Power to deſtroy him by his Abſence, than if he was produced *viva voce* againſt the Priſoner. 4. Becauſe if *Goodman* had appeared againſt the Priſoner, he was infamous in the whole Courſe of his Life; and therefore could not be a good Witneſs, eſpecially in a Caſe of Blood. 5. Becauſe in this Caſe there was but one Witneſs (*viz. Porter,*) and he had a very doubtful one. 6. Becauſe Sir *John Fenwick* was ſo inconſiderable a Man, that he could not endanger the Peace of the Government, and there was no Neceſſity therefore of proceeding againſt him in this extraordinary Manner.

The Royal Aſſent given to the Bill.

The King gave the Royal Aſſent to this Bill for the Attainder of Sir *John Fenwick* on the 11th of *January*, but was contented he ſhould be beheaded only, and not put to Death as a Traitor; and Sir *John* was beheaded accordingly, on the 28th of *January* 1696-7 on *Tower-hill*, when he left the following Paper with the Sheriffs, *viz.*

Sir John Fenwick executed.

The Paper he left.

SPeaking nor Writing was never my Talent, I ſhall therefore give a very ſhort but faithful Account, firſt, of my Religion, and next, what I ſuffer moſt innocently for,

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for, to avoid the Calumnies I may reaſonably expect my Enemies will caſt upon me when dead, ſince they have moſt falſely and maliciouſly aſperſed me whilſt under my Misfortunes.

As for my Religion, I was brought up in the Church of *England*, as it is eſtabliſhed by Law, and have ever profeſſed it; though I confeſs I have been an unworthy Member of it, in not living up to the ſtrict and excellent Rules thereof, for which I take Shame to my ſelf, and humbly ask Forgiveneſs of God, I come now to die in that Communion, truſting as an humble and hearty Penitent to be received by the Mercy of God, through the Merits of Jeſus Chriſt my Saviour.

My Religion taught me my Loyalty, which I bleſs God is untainted; and I have ever endeavoured, in the Station wherein I have been placed, to the utmoſt of my Power, to ſupport the Crown of *England* in the true and lineal Courſe of Deſcent, without Interruption.

As for what I am now to die, I call God to witneſs I went not to that Meeting in *Leadenhall-ſtreet*, with any ſuch Intention as to invite King *James*, by Force, to invade this Nation; nor was I my ſelf provided with either Horſe or Arms, or engaged for any Number of Men, or gave particular Conſent for any ſuch Invaſion, as is moſt falſely ſworn againſt me.

I do alſo declare in the Preſence of God, that I knew nothing of King *James* his coming to *Calais*, nor of any Invaſion intended from thence, till it was publickly known: And the only Notion I had that ſomething might be attempted, was from the *Thoulon* Fleet coming to *Breſt*.

I alſo call God to Witneſs, that I received the Knowledge of what is contained in thoſe Papers, that I gave to a great Man that came to me in the *Tower*, both from Letters and Meſſages that came from *France:* And he told me, when I read them to him, that the Prince of *Orange* had been acquainted with moſt of thoſe Things before.

I might have expected Mercy from that Prince, becauſe I was inſtrumental in ſaving his Life: For, when about *April* 1695, an Attempt formed againſt him came to my Knowledge, I did, partly by Diſſuaſions, and partly by Delays, prevent that Deſign; which I ſuppoſe was the Reaſon that the laſt villainous Project was concealed from me.

If there be any Perſons whom I have injured in Word or Deed, I heartily pray their Pardon; and beg of God to pardon thoſe who have injured me; particularly thoſe who with great Zeal have ſought my Life, and brought the Guilt of my inoocent Blood upon this Nation, no Treaſon being proved on me.

I return my moſt hearty Thanks to thoſe noble and worthy Perſons who gave me their Aſſiſtance by oppoſing this Bill of Attainder, without which it had been impoſſible I could have fallen under the Sentence of Death. God bleſs them and their Poſterity; though I am fully ſatisfied they pleaded their own Cauſe while they defended mine.

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I pray God to bleſs my true and lawful Sovereign King *James*, the Queen, and Prince of *Wales*, and reſtore him and his Poſterity to this Throne again, for the Peace and Proſperity of this Nation; which is impoſſible to proſper till the Government is ſettled upon a right Foot.

And now, O God! I do with all humble Devotion commend my Soul into thy Hands, the great Maker and Preſerver of Men, and Lover of Souls; beſeeching thee that it may be always dear and precious in thy Sight, through the Merits of my Saviour Jeſus Chriſt. *Amen.*

In this Place I ſhall, as I propoſed, give ſome ſelect Speeches for and againſt this Bill of Attainder in the Houſe of Commons, and then make my Remarks upon the whole as uſual.

Sir John Hawles, *Sollicitor General.*

Mr. *Sol. Gen.* This is a Bill for attainting Sir *John Fenwick* of High Treaſon: 'Tis the greateſt Crime we know in the Law; and, I think, the greateſt Crime known in a Government. It is much greater than Murther, or any thing elſe; becauſe it ſubverts the Government, and the Law whereby theſe Crimes are puniſhed; and Perſons ſhould be deterred from committing theſe Crimes.

It hath been made a Queſtion by the Gentlemen at the Bar, (I think two of them) Whether this Matter that Sir *John Fenwick* is indicted and accuſed of is High Treaſon or not? I muſt confeſs I heard ſomething of it without Doors; and that they would make it out, That if he was guilty of the Matter charged it was not High Treaſon. I thought it ſomewhat a bold Matter, but did not think they would have undertaken it in this Place, though they might have pretended ſome Flaw in the Indictment. But it ſeems they have the Authority of a good Lawyer in it, and they have quoted one learned Author, as they pleaſe to call him; though I take that for a great Compliment: I believe they may main my ſelf; and they have done me ſome Honour; for they ſay my Lord Chief Juſtice *Hales* was of the ſame Opinion; and then ſaid ſomething of *Dyer*. Now he hath read ſomething at large out of that Author he ſpeaks, and challenges any one to ſhew any Opinion, That even a Conſpiracy to levy War was High-Treaſon within the Statute of 25 *Edw.* III. Now I would give a Challenge on the other Side, That he would ſhew me any Opinion before that Time, or ſince, That a Deſign to depoſe the King is not High-Treaſon within that Statute? The Author that he ſpeaks of, ſays that expreſly in the Matter of my Lord *Ruſſel*, and tells you particularly; and in *The Government Vindicated*, which was only an Anſwer as to the Proſecution of my Lord *Ruſſel*, there are ſeveral Caſes cited, That a Deſign to depoſe the King was High Treaſon, and agreed to by that very Perſon; and it always was agreed to be High-Treaſon. Then take the State of this Caſe, and that of my Lord *Ruſſel:* The great Matter was, That he ſent ſome Perſons to view the Guards (it was ſaid, in order to ſeize the King;) this was Evidence againſt my Lord *Ruſſel* for a Conſpiracy

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ſpiracy to levy War: But it was ſaid, That this was not ſo much a Conſpiracy to levy War againſt the King as againſt the Guards. But this is of a quite different Nature: Capt. *Porter* hath given you an Account of it, (and I think *Goodman*'s Examination is to the ſame Purpoſe:) That they met in *Leaden-hall-Street*, and conſulted how to bring King *James* back again; and the only Method they could think of was, to ſend *Charnock* over to King *James*, that he might prevail with the *French* King to ſend them 10,000 Men, and they would meet him here with 2000 Horſe; and for what Purpoſe was this? It was to bring back King *James* again. I would be glad to hear if thoſe Gentlemen that were at the Bar, or any Body elſe, could ſay this was any thing elſe but a Deſign to depoſe King *William?* And they can't ſhew me one Lawyer's Opinion, but that deſigning to depoſe the King was ever called the imagining the Death of the King within the Statute of 25 *Edw.* III. The firſt Reſolution of this Matter was pretty early; I think it was *Henry* IV's Time, and that was pretending *Richard* II. was alive, and that he was the lawful King. So that the Matter is Treaſon, as it is charged in the Indictment.

Then as to the precedent, That 'tis an ill Precedent: I muſt confeſs I am not afraid of a Precedent of this Kind. I ſhould be glad if theſe Gentlemen ſhould turn back, and ſee how many Attainders have been by Act of Parliament: But I dare ſay, there have been more Men deſtroyed by the irregular Judgment of a Commiſſion of Oyer and Terminer, than by all the Acts of Parliament, whether legal or illegal.

As to what they ſay of my Lord *Coke*, who mentions the Attainder of my Lord *Cromwell* and Sir *J. Mortimer*, the Gentleman pretends to repeat my Lord *Coke*'s Words at large; but he did not deal ſo well as he ought to do by you; for he ſhould have told you all my Lord *Coke* tells you; That *Cromwell* was never brought to anſwer, neither permitted to ſay any thing for himſelf, neither in Parliament, nor where he was. Now, pray Sir, is this the preſent Caſe? Hath not Sir *John Fenwick* been heard by you? I would be glad that Gentleman, or any body could ſhew me, that any Perſon hath had ſo fair an Hearing before Commiſſioners of *Oyer* and *Terminer*, as Sir *John Fenwick* hath had before you. As to Sir *J. Mortimer*, 'tis much of the ſame Nature. My Lord *Coke* ſays, there was a Jealouſy of Sir *J. Mortimer*'s pretending to the Crown; and becauſe they ſuſpected him, they did give out that he ſaid, That the Earl of *March* was Heir to the Crown; and, if he did not, he would pretend to it himſelf, *&c.* Now, ſays my Lord *Coke*, this was but a bare Pretence, and nothing elſe. He ſpeaks as if he did not ever think him guuilty of thoſe Words; and ſays, having indicted him, they not being able to proceed that Way, they made it good by Act of Parliament, and he was condemned. So that what my Lord *Coke* complains of is, That theſe Perſons ſo condemned were never heard: And, if this be the Truth of the Matter, theſe Precedents (with Submiſſion) have no Affinity with yours. But I believe this may be ſaid in this Caſe, Sir *John Fenwick* hath been heard, and that more than ever any one in Parliament was before, in a Capital Matter.

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As to the Caſe of my Lord *Strafford*, he had Counſel aſſigned him to ſtand by and hear but not to prompt him. If there aroſe any Point of Law, he was to propoſe the Matter to the Lords, and the Counſel was to aſſiſt him by their Directions. And, in the Caſe here before you, you have allowed Sir *John Fenwick* Counſel; not only to aſſiſt him in Point of Law, but to aſſiſt him in Point of Fact too. They have made Anſwer for him; ſo that I ſay he hath been tried fairer than any Man ever was in Parliament, be it upon Bill, or upon Impeachment; that is, as to the Matter of Precedent. Then it hath been ſaid This would not be good before the Judges. I muſt confeſs it; but the Evidence, Captain *Porter* gave of his own Knowledge of Sir *John Fenwick*, every body will agree, is what the Law will allow. But he is but a ſingle Witneſs, and you ought not to proceed upon the Evidence of a ſingle Witneſs. Let us ſee how the Law ſtands upon the whole Matter. You have made an Act of Parliament laſt Seſſions, and I own the Law was before that, that there ſhould be two Witneſſes in Caſe of Treaſon; but all that goes no farther than to Trials in the *King's-Bench*, and Commiſſions of *Oyer* and *Terminer* and Goal Delivery. And if you look upon thoſe Acts, 'tis very plain, for they refer moſtly unto the Judges, what they ſhall do in ſuch and ſuch Caſes: But then you will ſee what is the Reaſon of making thoſe Rules: I think there was good Reaſon that you ſhould not put that Power in Perſons below that you have in your ſelves: You give them Rules to proceed by, and they are to keep up ſtrictly to them: You may act by other Rules. 'Tis one thing when I command my Servant to do ſuch a Thing, and another thing when I act my ſelf: And there is a Difference when a Judicature is by few, and when 'tis by many; the Law puts a greater Confidence in many, than in a few. The ordinary Trial is by twelve Jurors; but if it be a Matter of an high Nature, as an Attaint then it ſhall be by twenty-four; and you do prefer a greater Number in every thing to a few. 'Tis ſaid, tho' a Judge do think in his Conſcience a Perſon guilty, yet he ought not to make uſe of that private Knowledge; and a Caſe was quoted out of *H.* 4. but I think that Judge might have behaved himſelf ſomething better than he did; and, ſure I am, now he would be blamed. I do not ſay that a Judge, upon his private Knowledge, ought to judge, he ought not: But if a Judge upon the Bench knows any thing whereby the Priſoner might be acquitted or convicted (not generally known) then, I ſay he ought to be called from the Place where he ſate, and go to the Bar, and give Evidence of his Knowledge: And ſo the Judge, in *H.* IV's Time, ought to have done, and not to have ſuffered the Priſoner to have been convicted, and then get a Pardon for him; for a Pardon will not always do the Buſineſs; for there may be a

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Forfeiture that the King's Pardon does not reſtore. But though we act as Judges here, do we act only as Judges? I thought we were as well Triers of the Fact as Judges. There is this Difference between the Judicature of *Weſtminſter-Hall* and this Court. They are to judge upon a Fact found by a Jury; but we act both the Part of a Jury in trying, and alſo of Judges in judging what the Fact amounts to: So that if a Jury-man may make Uſe of his private Knowledge to acquit the Priſoner, as (I think) no body doubts but 'tis his Duty to do, then every Gentleman in this Houſe may make uſe of his private Knowledge to acquit the Priſoner, or convict him.

I confeſs for my Part, I am ſatisfied, that Sir *John Fenwick* is guilty of this Crime for which he ſtands accuſed. I do think this Crime is High-Treaſon: I think there is no Danger of a Precedent in this Caſe, if you convict him, being convinced, upon the Evidence you have heard, that he is Guilty. I own, if any Gentleman thinks he is not guilty of meeting at the *King's-Head* Tavern in *Leadenhall-ſtreet*, or at Mrs. *Mountjoy*'s, for the Purpoſe given in Evidence, he ought to be againſt the Bill: But I think every Man that is of that Opinion ought to be for the Bill. I am one of thoſe that think he is Guilty; and therefore am for committing the Bill.

Mr. Harcourt, *(afterwards Lord* Harcourt.*)*

Mr. *Harcourt*. I can readily agree with the Gentleman that ſpoke laſt, that High-Treaſon is the higheſt Crime in the Law; and further, That the Matter of the Indictment, that is mentioned in the Recital of the Act, is undoubtedly High-Treaſon: And I am ſure he will agree with me in one Thing alſo, That the greater the Crime is that any Perſon is accuſed of, the clearer the Proof ought to be by which he is convicted.

Some Gentlemen have begun their Diſcourſe in Relation to the Power; but ſure 'tis no Argument becauſe I can do a thing, therefore I will do it; becauſe we have Power to repeal *Magna Charta*, and all other ſubſequent Laws which have been made in Favour of Life and Liberty, and Property, by the ſame Conſequence we ought to do it. A better Reaſon muſt be given me, before I conſent to this Bill.

Then for the Precedents, 'tis ſaid, There have been many, and many have been mentioned: And, if I thought it worth while, I would mention many more you have not heard of: As for Precedents in general, they are ſo far imitable as they are grounded upon true Reaſon, and agreeable to Juſtice: But I don't remember any one Precedent of this Nature for a Perſon in Cuſtody, forth-coming to be tried, yet to be attainted without a Trial at Law, but what has been univerſally branded; and they all ſeem to be Reproaches even to theſe ill Reigns in which they were uſually made; and rather to be marked out as Rocks for us to avoid, than Patterns for our Imitation.

Before I particularly mention the Facts how they ſtand before you, I would beg Leave to obſerve upon the general Method of your Proceedings, and tell you what ſtaggers me in it.

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I have often heard this called a Trial, and that we are the Judges: The Gentleman that ſpoke laſt gave us another Title, and told us we were the Jury alſo: I know no Trial for Treaſon but what is confirmed by *Magna Charta*, *per Judicium Parium*, by a Jury, which is every *Engliſhman*'s Birth-right, and is always eſteemed one of our darling Privileges; or *per legem terræ*, which includes Impeachments in Parliament; but if it be a Trial, 'tis a pretty ſtrange one, where the Perſon that ſtands upon his Trial hath a Chance to be hanged, but none to be ſaved. I can't tell under what Character to conſider our ſelves, whether we are Judges or Jurymen. I never heard of a Judge, I am ſure not of a Jury-man, before, but he was always upon his Oath: I never heard yet of a Judge but had Power to examine Witneſſes upon Oath, to come to a clear Sight and Knowledge of the Fact: I never heard of a Judge, but, if a Priſoner came before him, the Priſoner was always told, he ſtood upon his Deliverance, and had not only a Power to condemn the Guilty, but to ſave the Innocent. Have we this Power? Suppoſe, upon ſuch a Trial as this (if it muſt be called ſo,) it may ſo happen, that a Perſon that comes before us ſhould be the innocenteſt Man in the World; what Judgment is it that we can give, for ſo much as ſuch a Perſon hath made his Innocency fully appear? Is the Speaker, by his Warrant, to ſend him back again to *Newgate?* You can't diſpoſe of him otherwiſe, though you were ſatisfied of his Innocency: But, in ſuch a Caſe, the Party muſt undergo a double Trial, which is contrary to all the Rules I have heard of. If I am a Judge in the Caſe, I beg Leave to tell you, for my own Juſtification only, what a Definition I have met with of a Judge's Diſcretion. My Lord Chief Juſtice *Coke* ſays, 'tis *Diſcernere per Legem*; and, by that Diſcretion, I beg Leave to conſider this Caſe: If Judges make the Law their Rule, they can never err; but if the uncertain arbitrary Dictates of their own Fancies, which my Lord *Coke* calls the crooked Cord of Diſcretion, be the Rules they go by, endleſs Errors muſt be the Effect of ſuch Judgments.

As to this particular Caſe, I did expect from the Gentleman that ſpoke laſt, that he would have told you, there was a plain Evidence why you ſhould go on to the paſſing of this Bill; but, inſtead of that, I am ſurprized to hear a thing mentioned, that in Parliamentary Proceedings a Man may be hanged by one Witneſs; certainly that is not to be taken for granted.

As to this particular Caſe, I would take Capt. *Porter* as upon his Oath, for Suppoſition: You have one Witneſs againſt Sir *John Fenwick* for High Treaſon; and, with your Leave, I deſire to examine what you have more in this Caſe.

Yeſterday you voted a Paper to be read ---- *Goodman*'s Narrative or Examination; 'tis a different Caſe now; you have it before you to determine upon. Yeſterday the Queſtion was only for hearing: But, Gentlemen, now conſider how far they ought to believe it, and the other Evidence we heard. And firſt,

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there is ſome Evidence that *Clancy* tampered with *Porter*, and gave him a Sum of 300 *l.* and ſo they would infer, becauſe *Porter* was tampered with to be gone, therefore *Goodman* was. It was told us further (and I deſire I may be informed, if I am miſtaken) that *Clancy* ſaid, he came from Sir *John Fenwick*, and afterwards my Lady *Mary Fenwick* ſaid ſhe would make good what *Clancy* had ſaid: And from theſe Arguments they preſume that Sir *John Fenwick* knew of it. Give me Leave to tell you a Rule I never heard contradicted, That Preſumption is to be made in Favour of Life; but to preſume a Man Guilty becauſe *Porter* was tampered with by another, ---- Becauſe he ſaid it was by Sir *John Fenwick*'s Order, ſhall we preſume Sir *John Fenwick* did it? Is Hear-ſay to be Evidence? Or is a Man to be had to the Gallows upon Preſumption? How often, and with how much Reaſon have we heard Examinations againſt Judgments, upon Preſumptions, Inuendo's, conſtructive and accumulative Treaſon? *&c.*

Gentlemen, There is ſome further Evidence; and that is of what was ſworn at *Cook*'s Trial: And ſome Gentlemen thought fit to have the Record read, and an Examination of what was ſworn there. I can never go ſo far as to think it reaſonable, That what Evidence hath been given in one Caſe ſhould affect another Man; but all this is to be anſwered, by calling it Parliamentary Proceedings. We doubt 'tis no Evidence in the Courts below; but they are mentioned with ſome kind of Diſdain, as very inconſiderable. In this Caſe, I beg Leave to ſay this in their Vindication, That whatever the Rules of *Weſtminſter-hall* are, 'tis not therefore Reaſon, becauſe 'tis a Rule; but becauſe 'tis Reaſon, and Reaſon approved of by long Experience, therefore 'tis a Rule: And if they make their Rules for that Cauſe, I hope that is a Cauſe why we ſhould imitate them: But I would not have thoſe Rules thought Matters of Form, but Subſtance, or, more properly, Part of the Law itſelf.

Upon the whole Matter, if no Gentleman will give us a Reaſon why this is Evidence, but one Witneſs, and that not upon Oath; and if we are come to our Parliamentary Diſcretion, to ſupply that Defect, the Want of the other, 'tis a Diſcretion I will diſclaim all the Days of my Life: And I hope you will reject the Bill.

Sir Thomas Littleton.

Sir *Thomas Littleton.* Sir, I ſhall not trouble you long in this Debate, that hath taken up ſo much of your Time already in the Conſideration of ſome Matters we have been upon; though I did think your Time not very regularly ſpent, till this Occaſion offered it ſelf. I hope, therefore, now it will take up leſs of your Time: I ſee the great Matter that was inſiſted on before, is inſiſted upon ſtill; and I do think we may ſay it among ourſelves, though we would not let the Counſel, That we are tied up, in this Caſe, by the Rules of *Weſtminſter-hall*; but, I believe, if that was the Caſe, and the Queſtion was no otherwiſe than whether or no we are tied up by the Rules of *Weſtminſter-Hall*, I believe it would receive a Determination, that we are not bound up to thoſe Rules.

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But I will take leave to tell you what I think is proper for us to ground our Judgment on. I think the great Reaſon, even of thoſe that are againſt the Precedent, why they did admit Sir *John Fenwick* to have Counſel, and to examine Witneſſes, if we had any, and to croſs-examine the Witneſſes, and why they were willing to hear Evidence on both Sides in the Nature of a Trial; the great Reaſon was, becauſe that, in a Caſe of ſo great Conſequence as this is, they would have the beſt Information they could obtain. Why did they deſire to be informed; but that afterwards they could lay their Hands upon their Hearts, and give their Judgment upon their private Opinion, Whether he was guilty or no? They ſay we are not to give our Judgment upon our private Opinion; I always will. (It was not long ago we were not to have our Religion upon our private Opinion neither.) And, when I am juſtified in that, I will rely upon it: Whether this be ſtrictly legal Evidence, I do not lay ſo much Weight upon it, as whether it hath ſatisfied my Conſcience; and I believe there is not a Man in the Houſe but is ſo (upon what he hath heard), and doth believe that Sir *John Fenwick* is Guilty; and, if we believe he is Guilty, I would be glad to know by what Rules in the World any Man can give his Vote againſt this Bill, being of that Belief. And I tell you why I think every Man believes ſo----becauſe every Man in the Kingdom, that hath not heard ſo much as we have heard, does believe him to be ſo: And I can't think that their Repreſentatives only ſhould be of another Opinion.

What Evidence have you had? You have had Capt. *Porter*'s Evidence, and that would be good even in inferior Courts: And beſides that, you have the Evidence of what *Goodman* did ſwear before the Grand Jury; you have heard what he did ſwear, and the Grand Jury did believe him: You have heard likewiſe what he did ſwear in another Cauſe to the Petit Jury, and they believed him, and convicted the Priſoner upon it: And though this be not legal Proof, ſtrictly ſpeaking, will any body ſay that I have Reaſon to disbelieve this Man, and think he hath ſworn falſe? Ay, but here is but one Witneſs, Gentlemen tell you. I will put a Caſe where I believe this Houſe would attaint a Man without any Witneſs. Suppoſe two Perſons had ſeen Sir *John Fenwick* kill the King (I believe we ſhould not have pulled him in Pieces in a barbarous Manner, but he would have had a Trial); and ſuppoſe, before his Trial, they had been conveyed away, if before they had ſworn this to a Grand Jury, and they had found the Bill; I believe this Houſe would have attainted him for it.

Sir, I do not think that we ſhould ſtand upon theſe little Niceties, nor be bound by the little formal Proceedings of other Courts, when the Government is at Stake. We are ſent hither to take Care that the Publick Safety do not ſuffer any Miſchief from the Enemies of it: We have had Plot upon Plot; and I have heard ſo much ſaid on Behalf of the *Lancaſhire* Plot without Doors, that I wiſh

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we do not get an ill Name upon our ſelves before we have done. We have this Power to exert upon extraordinary Occaſions; and here is a Man that hath endeavoured to ſubvert the Government and Well-being of them that ſent you hither. I hope you will uſe it now; and if they knew who were not of that Opinion, I believe thoſe that ſent them would hardly ſend them any more.

Mr. Howe. Mr. *Howe*, Sir, as to the Argument, That if it was known how we gave our Opinion, thoſe that are againſt this Bill, the People would not chuſe them again: I am not afraid of that, I have been told ſo often: And yet I find the People that I live amongſt, uſe me better and better every Day, and I believe, Sir, they will deſire to uſe me, when they will lay other Men aſide. I muſt in ſome Meaſure ſupport what was ſeemed to be reflected on an Honourable Gentleman, in that he ſaid, he had rather be tried by 12 than 400. I am of his Opinion, and this is my Reaſon for it: I have my lawful Challenge in Caſe of the 12; and if there be any on the Pannel I have offended, I can deſire they may be withdrawn, and that cannot be done in any Caſe here.

But Gentlemen put the Streſs of their Argument upon that which no Body denies, and prove it handſomely; and well they may: For it is ſelf-evident, the Power of Parliament they inſiſt on, when no Body pretends but we have a Power to do what we pleaſe: But I muſt ſay of their Power what *Bracton* ſays of the King's Power; *Hoc tamen non poteſt facere, quod non poteſt juſte facere.* It is ſaid, we are not tied up to the Rules of *Weſtminſter-hall*; we are not ſo: But I beg Leave to tell them, that what is Reaſon and Juſtice in *Weſtminſter-hall*, is ſo every where. And I do take theſe particular Points, we ſpeak of, to be grounded upon Reaſon and Juſtice; and ſo far we are to purſue them.

Two Evidences was not given as a Reſtraint upon *Weſtminſter-hall*, for Fear they ſhould do ſomething that is ill, for they are anſwerable for every Thing they do ill; but they were allowed to the People of *England*, that they might have a fair Trial; and it was thought conformable to the Laws of God, the Law of Reaſon, and the Law of all Countries, That no Man's Life ſhall be taken away upon any particular Occaſion: And for to ſay, that a Man's Life may be taken away by two Witneſſes in one Place, and by one in another, is to ſay, that there is no certain Rule to prove a Man guilty of a Crime that may forfeit his Life, which is not admitted in any Country whatever.

But truly, Sir, we are going a little further; for the Gentleman before told you, There was no need of two Witneſſes; one would ſerve: But now they go a little further, for they tell you there needs never a one at all; for I do ſay, If every Gentleman here is to be guided by his private Opinion there is no Man but before he heard this Cauſe, did conceive in their Opinion ſome Judgment of his Guilt: And, Sir, I think no Man but would have told you, that it would have been an unjuſt Judgment.

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But they do ſay, That the Bill of Treaſon that was made laſt Seſſions of Parliament, was to limit *Weſtminſter-hall*; and that I will truſt that with myſelf, which I will not truſt with my Servant. Why truly, if I, or my Servant, was to commit an Error, or a great Crime, I had rather my Servant did it than my ſelf: But I do not think that my Servant ſhould be bound up from doing an unjuſt Thing, and my ſelf ſhould have the Liberty to do it. Another Thing that Law provided againſt was, the People ſhould not be hanged without ſufficient Evidence; and theſe Things have been long complained of: But I never thought that the Evidence of one Witneſs and one Witneſs would be ſupported in theſe Days.

But, Sir, what have you done? We have prevented People being executed by an Arbitrary Power, and in an unlawful Way in *Weſtminſter-hall*; but if you give this Example, you have brought the ſame Proceedings into this Houſe, and that they may be perpetually executed here; and ſo the Subject will be never the ſafer for the Bill of Treaſon.

And I do believe likewiſe, that it is better that a very heinous Fault, or a Miſtake, ſhould be committed in *Weſtminſter-hall* for ten Years together, than once perpetrated in this Houſe: And my Reaſon is this; becauſe *Weſtminſter-hall* have a Law to be tried by, if they tranſgreſs that Law, and there is a Way by turning out of Judges and other Things; and this Houſe hath no Superior Power, and when they do a Thing they make it a Law: So that this Houſe (as it hath often been obſerved) can make this Nation unhappy; becauſe *this Houſe can only eſtabliſh Arbitrary Power and Miſery upon this Nation by a Law.*

Sir, as to the Evidence, to ſay ſomething to it, ſince every Body hath ſpoke to it; for my Part, I do confeſs to you, the longer I ſit here, and the more I have heard of this Trial, the leſs I have been convinced within myſelf, that theſe Witneſſes can know any Thing of Sir *John Fenwick*'s Guilt. I have heard Captain *Porter* give his Evidence; but that is no ſufficient Proof to me: I have heard what Evidence *Goodman* did give to the Grand Jury; but whether they did ask ſuch Queſtions as I ſhould, if I had been of the Grand Jury; or whether they did confront him with Evidence, I cannot tell? Therefore, though the Grand Jury was convinced by it, it is no Reaſon to convince us; becauſe we might not be convinced by the ſame Evidence.

But to go farther: There is very great Reaſon to believe that *Goodman* was not then at this Place, and that not one Word that *Goodman* ſays is true. I have ſuch Reaſon for what I ſay, that if *Cook*'s Trial had been before this Houſe, (not to arraign *Weſtminſter-hall*, though I think we are a Superior Power, and I may ſay what I pleaſe of that Trial); I ſay, if *Cook*'s Trial had been before this Houſe, and what I have heard be true, I do think they would hardly have found *Cook* guilty upon *Goodman*'s Evidence: It is pretty evident now, *Goodman* was not at the *King's-Head*; for there were three as poſitive Evidence as could be, that he was not at that Place when he

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ſwore he was: And I obſerve a little Failure in Captain *Porter*'s Evidence in that Point; for I don't think it proved by Captain *Porter*, that *Goodman* was by when this Diſcourſe was; for he ſays he ſpake of this Thing at Mrs. *Mountjoy*'s, and dined there.

Members. No, no: It was at the *King's-Head*.

Mr. *How.* Well, there was but one Place where it was. Now, whether Captain *Porter* heard them talk of it before *Goodman* came in, or whether *Goodman* be a good Witneſs, he having been there but the latter Part of the Time, which ſeemed to me to be the Time they ſhould have given over their Talk of the Buſineſs, they having been ſo long together before; but it does not appear to me, that *Goodman* can be a good Witneſs.

But I take it, that it is not juſt, nor reaſonable to find a Man guilty upon one Witneſs and Circumſtantial Evidence. I did mention a Caſe where there was a poſitive Witneſs, and a Circumſtantial Witneſs, it was in my Lord *Delamere*'s Trial; and yet that was not thought a convincing Argument by the Lords to find him Guilty; and I hope no Conſideration will oblige us to do that which I am ſure we ſhould blame them for doing.

The Conſequence of this, Gentlemen ſay, they do not fear: I believe, if Sir *John Fenwick* had been told when he was Major-General of King *James*'s Army, that I ſhould come here to ſit upon his Life, he would have laughed at it, and thought it impoſſible; but the contrary has happened: And I have ſeen Parties hang one another with ſuch Violence, I pray God we may keep from it. I do not know, we are all concerned in ſome Meaſure, it having been the Unhappineſs of this Nation, that at one Time or another every Body hath been concerned, that they may have a Proceeding of this ſort againſt them, and this ſurmounts all that at preſent Gentlemen can do; for it extends beyond all Pardons, and will reach beyond the Act of Indempnity. God knows who may be ſerved ſo, notwithſtanding all the Acts of Indempnity.

Sir, there is one Thing that is ſaid further, which the Gentlemen at the Bar conclude with, as a ſubſtantial Argument that we do not aim at Sir *John Fenwick*'s Blood, (God forbid we ſhould), but at his Confeſſion: You will here read the Bill once, and twice will commit and paſs the Bill (Sir *John Fenwick* not confeſſing), and ſtill this is not to aim at his Blood: But it happens, perhaps, that this Man knows no more of this Matter; and this Man is racked in a manner to Death from Reading to Reading, becauſe he does not confeſs; and at laſt he comes to be hanged, drawn and quartered (inſtead of High-Treaſon), for not confeſſing it.

This I take to be the dangerouſeſt Part of all the Arguments that have been urged: For this I muſt tell you, that, according to my private Opinion, I do believe that Sir *John Fenwick* does know of no more Perſons concerned (nor do I believe he knows all that he ſays) than he tells you. He hath not heen a Man that hath kept Company with great Men: He hath generally relieved the poor *Jacobite* Officers: There are five People, as I take it, he hath told you he did converſe with: I would fain know in what Plot any Man converſes with above Five of the Plotters? There may be a Plot that may be moſt dangerous, and yet a Perſon that knows of this Plot, may not know above two or three others that are concerned in it.

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But the great Argument is, *Take care of your Government.* In the firſt Place, they muſt ſuppoſe the Safety of the Government depends upon his Execution, or why do they uſe it as an Argument? But I wiſh they would ſhew me the Government would be one Penny the worſe if this Bill does not paſs. Do you want Examples of Puniſhment to deter Men? No; you have had lawful Proof againſt four or five Perſons, and they have been executed: Here are Examples made, that no Body for the future may preſume to plot together and not to be executed.

What is the Reaſon of this Bill then? Why, there is a Plot going on, Sir *John Fenwick* hath been impriſoned this ſix Months and more; and will you hang him becauſe there is a Plot now going on? What Conſequence is that? Do you think that he knows any Thing of it, or that he can diſcover it? It hath been ſtarted ſince his Confinement it may be, and he knows nothing of it: So that as to what is preſſed of his Confeſſion, I know no one Thing would be gained by it, that could be uſeful to the Government; for I believe all hath been diſcovered already that he knows, and that Plot hath been utterly diſappointed, and they have been fain to make a new one. Will you proceed in a Bill of Attainder, unleſs the Matter be of the greateſt Conſequence? The Preamble of the Bill for attainting the Duke of *Monmouth* gave a ſubſtantial Reaſon for it, that he was in Arms, and could not be brought to Juſtice: That implied, that if he could have been brought to Juſtice, they would not have attainted him.

I think I need not give you more Arguments in this Matter, I wiſh I could hear thoſe that have been given well anſwered. I ſhall ſay no more; but I know this, that my private Opinion ſhall never guide me in this Caſe; it is not the ſame Thing with the Caſe my worthy Country-man put: In the Caſe of Religion, my private Opinion does not affect other Perſons; indeed it does the Papiſts, where they will murther others that are not of that Religion.

Mr. *Boyle.* The Diſorder a certain worthy Gentleman was in, makes me the more concerned, for fear of falling into it my ſelf.

I hope in this Debate, Gentlemen will be very cautious of uſing it as an Argument, What Application our Votes ſhall have without Doors, and with thoſe we repreſent, when we are to give Judgment, as far as in us lies, for the Life and Death of a Man; and therefore I muſt obſerve, that the Eagerneſs that is juſtifiable upon Impeachments, may not look ſo well, now we are Judges upon a Bill of Attainder. You have gone over the whole Courſe of the Evidence, and I believe that this Debate will ſhew you pretty plainly what

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is to be the Fate of this Bill; for I believe all the Arguments will now be uſed that can be: As to what hath been ſaid of extorting a Confeſſion, I take it to be quite out of the Caſe.

I am ſorry to be engaged one Way or another: I would not, if I could help it, out of the Houſe, be upon a Jury of Life and Death; yet, in that Caſe, I ſhould know the Law, or be told it by the Judges: But in this Caſe, we are both Jurymen and Judges, and know not what Rules we are to go by; but ſet up a Court of Equity, which hath no Bounds, but our own Conſciences.

As to Sir *John Fenwick*, I know him not; as to his Cauſe, I am ſure I am againſt it; but how far I think him guilty or not, I think is not the ſingle Point to be conſidered. I muſt confeſs, there have been ſeveral People accuſed of this Conſpiracy, and have been named by the Evidence at the Trials; and I believe they are much alike Guilty, being upon the ſame Evidence; but as to all that hath been opened before you, and proved, it can amount to no more than this, There is but one Evidence, which by the Law would be a good Evidence to convict him in another Place: and therefore I do agree with the Gentleman that ſpoke under the Gallery, that this is a very extraordinary Caſe; for one Witneſs is not ſufficient at Law to convict him, and the Law would be very different, if I am to judge according to my own Opinion, and not by the Rules preſcribed by the Law: But though this Proceeding is not ſtrictly according to the Law of the Land, yet, if it was ſuch an extraordinary Caſe that required you to diſpenſe with thoſe Forms, and come to this extraordinary Manner of Proceeding, I think, for my own Part, it might be ſupported by the Neceſſity of it, for it is impoſſible that it ſhould be otherwiſe in Practice: Thus, when the Government is at Stake, and nothing will preſerve it but the breaking through the ſettled Forms; then the Government will break through them, and whatever Rule you preſcribe, it will always happen ſo.

There is a very extraordinary Caſe, and that was in the Conſpiracy of the State of *Venice*, above a Hundred Years ago, I think, ſet on Foot by the *Spaniards*; then the State, to get the whole Matter out, promiſed a Pardon to as many as were concerned in it; and after they had promiſed it, and treated with them about it, they thought it neceſſary for the Preſervation of the whole, to break their Faith, and they were all put to Death. This was upon Point of Preſervation of the Government.

But, Sir, as to Precedents, give me Leave to ſay, I do not give that Authority to them, unleſs I know all the Springs, and ſecret Hiſtory and Tranſactions, that were their Guide in making thoſe Precedents; and as to Precedents that have been quoted, when the Parliament has declared what was Treaſon, and what was not Treaſon, or have declared Conſtructive Treaſon, they may be grounded upon the Statute of 25 *Edw.* III. But I think, there is no Statute upon which they can ground the Condemnation of a Man upon one Witneſs.

In the Caſe of my Lord *Strafford*, upon Conſtructive Treaſons, it was there ſaid, That it was a Fire that had lain hid for 240 Years; and that it never broke out before, but to conſume him and his Poſterity. It was anſwered by *Pym*, If that was the Caſe, it was not for want of Law to juſtify ſuch a Proceeding, but all that Time had not produced ſuch an Offender.

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I do not doubt, but if any one will conſider the late Conſpiracy; and if that was the Queſtion, but it was as extraordinary as any Thing can happen; for it was to ſubject their Country to a Foreign Power, which is very extraordinary, and ſeveral Perſons were concerned in it: But there is one extraordinary Part which I do not remember this Gentleman is accuſed of, And that is the Aſſaſſination. Treaſon it ſelf is a very extraordinary Crime; but, give me Leave to ſay, that extraordinary Part is not alledged againſt this Gentleman; and this Bill does not ſeem to be brought in for that, wherein he is concerned in common with ſome others, but for the ſubſequent Matter alledged in the Bill. This Bill is grounded, not ſo much upon that he is guilty, as a great many more are, as upon ſeveral Circumſtances which have happened to no Body elſe. Give me Leave to inſtance in a Caſe now in my Head, (I beg your Pardon that I ramble; 'tis from the Awe I have upon me from this Aſſembly) in *Catiline*'s Conſpiracy; and if that was our Caſe, no doubt there would be another Sort of Argument for it: There they conſulted what to do with *Cethegus* and the other Conſpirators; he was at the Head of an Army, which only expected his Orders to lay *Rome* in Aſhes: The Queſtion was, whether they ſhould break the *Porcian* Law? And for the Safety of the Senate, they were put to Death before the Aſſembly roſe.

Now to come to this Part of it: Though Sir *John Fenwick* is a great Offender, yet I think his Caſe is not ſo extraordinary, as to make you proceed upon this Bill. I do take his living, or dying, not to be of that Conſequence as this Bill of Attainder: I know not how he comes to be ſo conſiderable when in Hold; for when he walked about Town, I never heard he was feared or regarded at that Time.

But to come to the Allegations in your Bill, upon which you are to ground your Judgment; the firſt Part is a new Conſpiracy, that is, for intending to create a Jealouſy between the King and theſe Noble Perſons: As to them, you have already paſſed a Vote in their Juſtification; and I think, their Actions may juſtify them to the World, as much as any Vote of the Houſe of Commons: But whatever that may be, I think it was a fooliſh Piece of Conſpiracy, as well as an ill one, for one, when he was in Danger of being hanged for one Plot, to venture upon another; and I think, there was at that Time two Witneſſes to bring him to his Trial, and that is an Allegation in the Bill. And as to the Protracting of his Trial, it is natural, and ſo juſtifiable, whether innocent or not, and what every Body attempts; and no Body can wonder at it:

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it: But in one Caſe or the other, it can be no ſufficient Ground to attaint him.

The next Thing that is ſaid is, That he hath been the Occaſion of the withdrawing of the Evidence. Now I muſt obſerve, that is not alledged in the Bill, and is proved but by Hear-ſay: But ſuppoſe it was true, and alledged; if any Man concerned in Treaſon, ſhall endeavour, by Friends or otherwiſe, to get off an Evidence, can that amount to that which is deſigned to be puniſhed by this Bill? To High-Treaſon? It is the Part of thoſe that are entruſted with thoſe Matters, to be in Expectation of ſuch Practices. What are Goals for, but to keep them in Cuſtody? And the People employed in thoſe Buſineſſes are to take Care of it. Are we to ſupply a Defect of what ought to have been done in another Place?

So that I do ſay, That a Precedent in an extraordinary Caſe, is no Precedent to be uſed in a little Caſe; it may be urged, but it is but a Pretence: When you have paſſed this Bill, which is the Record, the Matter will appear no otherwiſe, than are the Suggeſtions of your Bill. A Man hath aſperſed great Perſons, which is a great Fault indeed (for he is not charged with the withdrawing of the Evidence); therefore attaint him upon one Evidence: I think by this Bill you will open a Door for a Precedent of all Treaſons of the ſame Nature. Sir, there have been many Precedents mentioned; I will trouble you with none, becauſe moſt Gentlemen have read the Argument of Mr. *St. John* in this Caſe: I muſt confeſs, unleſs there was that Neceſſity as is pretended, which I do not ſee, I do not ſee how you can juſtify paſſing this Bill of Attainder, either by the Law of God or Man, in any Nation allowed.

I muſt confeſs, I have no Manner of Concern how this Queſtion goes, what I have ſaid, is more to ſatisfy my own Judgment, than work upon other People: I am not ſatisfied there is that Neceſſity that is pretended; and therefore, as my Judgment is now informed, I cannot give my Vote for committing of this Bill.

Mr. Harley *(afterwards Earl of* Oxford.)

Mr. *Harley.* It would be very unreaſonable and impertinent to trouble you long, after ſuch a Debate; I ſhall avoid Repetition of what hath been ſuggeſted to you, much better from other Perſons than would have been from me.

I own, 'tis a Caſe of great Concern, and it is my Misfortune that I ſhould ever ſit upon a Thing of this Nature; but I will diſcharge my Conſcience always, and give what Arguments occur to me, why I am againſt this Bill.

Gentlemen have been pleaſed in their Arguments, to enter upon the Debate of your Power and Authority, and have made that a Part of their Argument; but I think, with Submiſſion, we need not diſpute that at all. It is admitted, that there hath been Bills of Attainder paſſed formerly, and your Authority is not under Diſpute; for the Legiſlative in all Nations, have a Power lodged in them, for the Safety of the whole.

But your proper Enquiry is, Whether this is ſuch a Caſe as you ought to exerciſe this extraordinary Power? *omne regnum ſub graviore regno:* Though you have this abſolute Authority, yet it is to be executed by the Rules of Reaſon, and by the Rules (for ſuch there are) of Eternal Juſtice; and I look upon this as one that is inviolable, That no Man can forfeit his Life, in ſuch a Caſe as this is, without two Witneſſes: I muſt adhere to that, becauſe I have heard nothing in this Debate that can make me quit that Maxim; and it is ſuch an antient Land-Mark, that I will never draw a Curſe upon me, and my Poſterity, for removing of it. I beg Leave to ſpeak with this Earneſtneſs to you.

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Gentlemen have been pleaſed to make it Part of their Arguments, *The great Danger the Government is in*, if this Bill does not ſucceed. I will not uſe many Words, but I think that Argument ought not to be taken in the Groſs, but to be examined, Whether this Argument, of the Hazard of the Government, is of equal Poize for you to break the Eternal Rules of Juſtice. I won't quote the Caſe, becauſe every Gentleman knows it, (though there was two Witneſſes in that Caſe, to put an innocent Perſon to Death) where it is urged, the *Romans* will come, and take our State and Nation: But with how much Reaſon that was urged, every Body knows, and how far Government is now in Danger. Let us conſider, Is this Gentleman out of your Power? Is the Government in Danger of a Man that is your Priſoner? Is he in open Rebellion againſt you, if this Law does not paſs? If you have not your Hands in this Blood? Is he not under the Power of the Law? Did not he tell you ſo himſelf?

Every Gentleman ought to have a Zeal for the Government, and I wiſh it was as viſible in every Thing elſe; but if that be ſo, give us Leave alſo to ſpeak with Zeal for our Liberty and Antient Conſtitution. The Argument is turned two Ways; on one Side you are told, That this probably may make him confeſs ſomething; and by others, he is to be made an Example of Puniſhment. *This is the firſt Beginning of a Bill of this Nature*; but the ſame Reaſon that leads you to this, muſt lead you to all the reſt: The ſame Reaſon that is urged for this Bill to make him confeſs, will lead you to bring in a Bill to make him a good Evidence; this every Body muſt allow to be the Conſequence of it.

How does this Bill come before you? It comes before you upon a villainous, ſcandalous Aſperſion of ſome great Men; though I know them not all, yet I have a great Value for them, and I would make their Caſe my own: But if they were the neareſt Relations I had, I would be againſt this Bill upon their Account, and let any one examine the Reaſon of it.

Sir, I won't run into Precedents, but only becauſe it hath been told you, That the Precedents were made in one Reign by one Faction, and then the Attainders were reverſed in another Reign, by another Faction. There is one occurs to my Mind which hath been touched at, and is at leaſt of Inſtruction to me: There was a Caſe in *Edward* the Third's Time; there was the Depoſition of a King, a King barbarouſly murthered, and his Son up-

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on the Throne; and there was the Notoriety of the Fact, for which a great Man was attainted in his Son's Reign, and no different Title. And four Years after, a Bill was brought in againſt the Earl of *March*; and one of the Articles againſt him was, That he had procured that Attainder of that Noble Lord, under Pretence of ſome Letter, or Paper, that was ſigned by him; which, if it was ſo, ſays the Record, was no Evidence.

I lay this before Gentlemen, to ſhew them how Things have turned, and Precedents that have been made very unanimouſly; but in bad Times have been turned to ſhed the beſt Blood in *England*. It grieves me to my Soul to hear of Mr. *Corniſh*, whoſe Attainder you have reverſed, to hear that quoted as a Precedent in this Houſe: It is not whether two Witneſſes be the Rule of *Weſtminſter-hall*, it is the Rule of right Reaſon; and it is a Maxim in your Law, Make what Law you will againſt the Law of God, it is void; and this is the Law of God, and right Reaſon.

You muſt provide for the Government; and when you cannot do it by Courſe of Law, then Armies muſt do it when the Courts are ſhut. I hope Gentlemen will not put a hard Conſtruction upon what I have ſaid; I have done it to diſcharge a good Conſcience.

Sir Chriſtopher Muſgrave.

Sir *Chriſtopher Muſgrave*. I am ſure, at this Time of Night, I am unfit to ſpeak in ſo great a Matter; I muſt confeſs, I ſhould not have troubled you, if it had not been in the Caſe of Blood.

You have had a great Debate before you of the Power of Parliaments, and that hath been ſufficiently argued; and I have not Learning enough to give you any Precedents that have not been already quoted: But every Body does agree in this, That what Power you have of this Kind, is not to be exerciſed but upon extraordinary Occaſions. Now I would be glad to know, What this extraordinary Occaſion is?

Every Body allows, that Treaſon is the greateſt Crime a Man can be guilty of; and the Charge of this Gentleman is High-Treaſon: But therefore in this Caſe, muſt you exerciſe this Authority? Pray wherein does this Caſe differ from any other Caſe of High-Treaſon, that any other Perſon will be practiſing againſt the Government? All the Difference that I can make of it, conſiſts in two Points; the one is, That he hath prevaricated with the Government, and the other, That Gentlemen ſay, he hath been a Means of Procraſtinating his Trial; in which Time, an Evidence hath made his Eſcape. I will allow you, that it is a very great Crime for any one to aſperſe ſo great Men as he hath done; but I would be glad to know, whether there being ſuch an Ingredient, it be ſufficient to attaint him of High-Treaſon upon that Account.

Then as to that of a Witneſs being gone, Gentlemen have ſaid, They are apt to believe and there is great Preſumption, that he hath been the Occaſion of this Witneſs being gone. Is that an Ingredient ſufficient, though at preſent it hath not been proved to you? But if it had been proved, I ſhould not however think that is Treaſon: Then if this be the only Difference between this Gentleman, and any other Perſon that ſhall be practiſing to ſubvert the Government. I would know, if there be but one Witneſs againſt any Man for conſpiring againſt the King, if they may not have Recourſe to this Precedent, to proceed againſt him by Bill of Attainder? For the Argument is, Whoſoever is endeavouring to ſubvert the Government, provided there be but one Witneſs, you are obliged by Virtue of your Legiſlative Power, to bring a Bill of Attainder againſt him: And what then? Of what Uſe is the great Care and Wiſdom of your Anceſtors, and your ſelves, that where a Crime is ſo great, and the Puniſhment ſo great, there ſhould be two Witneſſes?

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I was mightily ſurprized to hear Gentlemen tell you, That two Witneſſes is a Form in your Law, and a Form in inferior Courts: I never could believe that was a Form; for according to your Law, no Man ſhall be declared guilty of Treaſon, unleſs there be two Witneſſes againſt him; ſo that it gives in a Manner, a Determination to the Crime: That I take to be the Caſe.

A Gentleman told you, That he was fully ſatisfied by Proof, that this Gentleman is Guilty: But how can a Man ſatisfy his own Conſcience, to condemn any Man by a Law that is ſubſequent to the Fact? For that is the Caſe; and pray ſee the Danger of Precedents: It now will appear upon your Journals, that you have cauſed to be read, a Depoſition of a Perſon that was abſent, taken before a Juſtice of Peace, when the Perſon accuſed had no Opportunity to interrogate him; and likewiſe, that you have heard a Witneſs as to what a Man ſwore in the Trial of another Man: All this will appear upon your Books.

And truly, I would be glad to know, if another Age may not be apt to think, that you took theſe to make good the Defect of another Witneſs; and then I muſt appeal to you, if you have not admitted of a Teſtimony, which according to no Law is admitted.

They ſay, you are not tied to the Rules of *Weſtminſter-hall*, nor their Forms: Is there any Law in being, that ſays a Judge may hear a Witneſs as to what was ſworn upon the Trial of another Perſon, to condemn him that was not Party to that Trial? If there be no ſuch Law, then the Rule is founded upon Juſtice and common Right, that nothing ſhall be brought againſt a Man, when a Man was not a Party when the Oath was made, and he had no Opportunity to examine him.

I thought it my Duty to tell you, That when you have made this Precedent, if any Perſon ſhall be accuſed of Treaſon but by one Witneſs, there will be the ſame Reaſon to proceed thus againſt him.

Remarks on the Bill of Attainder againſt Sir John Fenwick.

The principal Points to be conſidered in this memorable Proceeding, are, 1. Whether Sir *John Fenwick* was *charged* with High-Treaſon by the Bill of Attainder, when he appeared at the Bar of the Houſe of Commons?

2. If the Treaſon was duly proved, which was afterwards added to the Charge?

3. If it was not duly proved, Whether the Government was in ſuch imminent Danger from

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from Sir *John*, that there was a Neceſſity of making an Act of Parliament, on Purpoſe to execute him without Proof?

1. As to the firſt Particular, Whether Sir *John* was *charged* with High Treaſon by the Bill of Attainder, when he was brought before the Commons? His Counſel ſhewed, beyond Contradiction, that he was not; and therefore never applied themſelves to defend or diſprove that Treaſon which was only recited in the Bill, and not charged upon him. And the Commons themſelves ſufficiently acknowledged, that there was *then* no ſuch Charge in the Bill, by that very material Amendment they afterwards made to the Bill in theſe Words, *(viz.) Of which Treaſon the ſaid Sir* John Fenwick *is Guilty*. The Counſel for Sir *John* had made it ſo evident, That no Tribunal in the whole World ever condemned a Man *unleſs the Charge were both alledged and proved*, that this Amendment appeared neceſſary even to the Houſe of Commons: But then, Whether Sir *John* ought not to have been heard in his Defence, after they had charged him poſitively with the Treaſon, I leave to others to determine.

2. As to the ſecond Particular, Whether the Treaſon was duly proved? it ſeems to be admitted: If by *due Proof* we mean *legal Proof*, they had very little of this Kind when the Commons paſſed the Bill: Not a ſingle Witneſs to prove it *upon Oath*, and but one that appeared to *affirm* it on his bare Word, and he of a very bad Character. Indeed it was ſaid, that the Legiſlature were not tied up to Rules and Forms, but whatever they determined in their private Thoughts or Conſciences, whether they had a Syllable of legal Proof or not, was lawful; for thoſe who made the Law, might repeal or alter it as they ſaw fit; nothing they did, could, ſtrictly ſpeaking, be unlawful.

And it muſt be admitted, that the Legiſlature may make what Proof they pleaſe to be legal Proof: But when this very Parliament had, within two Years, made a Law that no Man ſhould be accuſed, much leſs condemned for High Treaſon, but on the Oaths of two Witneſſes, Was it decent for them to condemn a Man without one Witneſs, till that Law was repealed, unleſs upon abſolute Neceſſity, where the Fate of the Nation depended on his Life?

Had the Legiſlative Power been lodged ſolely in the Prince here, as it is in a neighbouring Nation, and he had juſt made a Law, That no Man ſhould be accuſed of High Treaſon, but on the Teſtimony of two Witneſſes; and yet ſhould have put a Man to Death ſoon after, upon leſs Evidence, What would his Subjects have thought of it? Would it have ſatisfied them, to have ſhewn he was veſted with a Legiſlative Power; and therefore nothing he did could be unlawful? Would they not have retorted upon him, That, in Juſtice, he ought to have repealed his former Edict, before he had condemned a Subject upon leſs Evidence than his own Laws required?

Had the ſame Prince promulged a Law, That no Man ſhould get drunk, would it have been decent (though his Supreme Authority might make it lawful) to get drunk himſelf, when he puniſhed that Offence in others?

Had the Prince ſhewn, indeed, that unleſs he broke through the ordinary Rules and Forms of Law, and diſpenſed with ſome Statutes for a Time, the Nation would infallibly have been ruined; not a Subject, I believe, not a reaſonable Man, I am ſure, would have been diſſatisfied with ſuch Diſpenſations, for the Safety of the Whole: The Properties, and even the Lives, of private Men muſt ſometimes be expoſed and hazarded, where the Government is at Stake. *The Safety of the People*, no doubt, *is the Supreme Law*. The ſole Queſtion, therefore, ſeems to be, by the Conceſſions of all Parties, *Whether there was a Neceſſity of taking off Sir* John Fenwick? Which has been ſo thoroughly debated in this Trial, that nothing can be added to the Arguments on either Side. And as the Legiſlature ſeem to have determined, that there was ſuch a Neceſſity by paſſing this Bill, it would not be decent in any private Man to affirm the contrary.

It was intimated, indeed, in ſome of the Speeches that were made upon this Occaſion, *That if ſome great Men had not been perſonally affronted and aſperſed by Sir* John Fenwick, *this Cauſe had never been brought before the Houſe*; and that, in Reality, he died for High Treaſon committed againſt ſome of the Miniſtry, rather than for High Treaſon againſt his Prince. But can it be ſuppoſed the Wiſdom of the Nation ſhould be biaſſed or influenced by the Piques and Reſentments of deſigning Miniſters in a Caſe of Blood?

However, it is certainly a Point of Prudence in all Gentlemen, to give as few perſonal Affronts and unneceſſary Provocations to their Enemies as poſſible; for theſe are too often remembered to their Prejudice, when Fortune frowns.

If we are to give any Credit to Sir *John*'s Dying Speech, or to the Speeches of ſeveral others at their Executions, *Charnock* was not ſent over to *France* to procure Foreign Forces, by the Company that met at the *King's-Head*, which was the very Overt-Act he and they were condemned for: And a Noble Lord, now living, as I have related already, proteſts ſolemnly, *Goodman* was not at that Meeting, and that there was no ſuch Diſcourſe there. So that, notwithſtanding Sir *John*'s Guilt was ſaid to be ſo evident as to have entirely ſatisfied the Conſciences of thoſe Gentlemen that were for the Bill, ſome People ſeem to doubt of the Fact, for which he was attainted, at this Day. Sir *John* was, indeed, a *Jacobite*, and diſaffected to that Government: And if an Act had been made to hang up every *Jacobite* in the Nation, it would have been lawful, becauſe an Act of Parliament is Law. But ſhould the Tables have been turned, and the *Jacobites* have met with Succeſs, would not thoſe Gentlemen have thought it a Hardſhip, if a Law had been made to hang up all, or any Number of Men, who were known to be diſaffected to the Government, without ſome particular Treaſon *legally charged and proved* upon them?

It may be further obſerved, that ſome Gentlemen, who clamoured moſt violently againſt condemning Men for Treaſon in the late Reigns,

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Reigns, without two positive Witnesses, were most zealous, when they got into Power, to dispense with such Laws, and hang up their Adversaries without any Evidence at all. What would the Friends of Lord *Russel* and *Sidney* have said, when a Witness was wanting, if the Ministry had procured an Act of Parliament to destroy them without legal Proof; when there was not one Precedent for it since the Foundation of the Government, where the Party was forth-coming? How would they have insisted on the Birth-rights and Privileges of *Englishmen*, to be tried by a Jury, and to have had the Witnesses brought Face to Face. This would have furnished Sir *Robert Atkyns*, and Sir *John Hawles*, with abundant Matter for their Remarks, and made them much more voluminous than we find them. Which brings me to consider Sir *John Hawles*'s Answer in the House at this Debate, when he was charged with affirming, *That a Consultation to levy War was not Treason*; and, by the same Rule that he vindicated the Innocence of the Lord *Russel*, he ought to have vindicated the Innocence of Sir *John Fenwick*, who was only charged with a Conspiracy to levy War, and corresponding with the King's Enemies, *The Lord* Russel's *very Case*.

To this Sir *John Hales* answers, That though a Consult, or a Conspiracy to levy War, was not Treason, yet he always held, that a Design to depose the King was High Treason. That the Treason, charged on my Lord *Russel* was no more, than that he sent some Persons to view the Guards, in order to seize or surprize them (while they were upon Duty, and watching for their Prince's Safety). This was not, he says, so much a Conspiracy to levy War against the King, as against his Guards.

But the Lord *Russel* was certainly charged with several Overt-Acts of High Treason, *(viz.)* his being at Treasonable Consults to raise War and Rebellion, in order to depose and destroy the King, and the sending Persons to view the Guards in order to surprize them. The first of these Sir *John Hawles* is here pleased to admit was High Treason. And as to the second, which he suggests was only a Conspiracy to levy War upon the King's Body-Guards, while they were upon Duty about his Palace, I may appeal to all Mankind, Whether there be a Government under the Sun, either Monarchical, or Republican, that would not interpret a Conspiracy to fall upon their Guards while they were upon Duty, watching in Defence of their Persons, to be a Conspiracy against their Masters and Sovereigns: Or whether, at this Day, if any Persons should be convicted of conspiring to surprize the Guards at the Palace of St. *James*'s, and of sending some of their Number to view what Posture they were in, in order to surprize them, they would not be deemed to conspire against the King himself, and be adjudged guilty of High Treason. But Lawyers, as well as other People, appear to be of one Opinion when they are out of Power, and of another when they are in Power, and will maintain the grossest Absurdities and Contradictions to gratify their Spleen, their Ambition, or Avarice.

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I shall close these Remarks with this short Observation, That one of the principal Inducements to the passing this Bill was said to be, that the Disaffected might see that no Artifice could screen them from the Resentment of the Government. But I am fully convinced, no Laws can defend a Man against the Rage and Fury of a certain Party, who carry Malice in their very Countenances, and will not scruple to overturn the best Constitution, to revenge themselves on their Fellow-Subjects, when they happened to have Power in their Hands.

The Trial of Dawson, &c.

The next Trial we find bound up with the State Trials, was for Piracy; which having little Relation to the State, I shall only give a short Abstract of the Case, that I may enlarge the more upon such as are properly State Trials.

Their Case.

The Prisoners, *Joseph Dawson*, *Edward Foreseeth*, *William May*, *William Bishop*, *James Lewis*, and *John Sparkes*, were tried at an Admiralty-Sessions held at the *Old-Baily*, on the last Day of *October* 1696, for Felony and Piracy; for that on the 30th of *May*, in the 6th Year of King *William* and Queen *Mary*, they did surprize and seize near the *Groyne* in *Spain*, a Ship called *The Charles the Second*, of Forty Guns, belonging to certain *English* Merchants, and commanded by Capt. *Charles Gibson*, forcing the said Captain, his Mate, and several of his Men, to go on Shore, and afterwards running away with the said Ship and Furniture.

They were indicted a second Time for piratically seizing and carrying away two *Danish* Ships on the 30th of *August* 1694. And a third Indictment was preferred against them for committing Piracy on a *Moorish* Ship near *Surat* in the *East-Indies*, on the 28th of *September* 1695.

Joseph Dawson confessed himself guilty on all the three Indictments; and the Facts were unquestionably proved against the rest: Whereupon they were all condemned and executed. These Pyrates were Part of the Crew which sailed with Captain *Every*, so famous for his Piracies, and the rich Prizes he made in the *East-Indies*, and on the Coasts of *Madagascar*.

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The Trial of Capt. THOMAS VAUGHAN, for *High-Treason*, before Sir CHARLES HEDGES, Judge of the Admiralty, the Lord Chief Justice HOLT, and other Commissioners, 6 *Nov.* 1696. 8. *W.* III.

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Captain Vaughan's Trial.

The Indictment.

THE Indictment charges the said *Thomas Vaughan* with High Treason, for that on the 8th Day of *July*, in the seventh Year of his present Majesty, there being then War between

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between our ſaid Lord the King, and *Lewis* the *French* King; and the ſaid *French* King have fitted out a ſmall Ship of War, called *The Loyal Clancarty*, manned with fifteen of his own Subjects, Enemies of our Lord the King, he, the ſaid *Thomas Vaughan*, a Subject of this Kingdom, entered himſelf a Soldier on board the ſaid Ship, and took the Command of it; and, as a Rebel to his ſaid King and Supreme Lord, did, in the Service of the ſaid *Lewis* the *French* King, on the High Seas, within the Juriſdiction of the Admirality of *England* (*viz.*) about fourteen Leagues from *Deal*, by Force of Arms, traitorouſly adhere to the ſaid Enemies of our Lord the King, and cruiſed in ſeveral Places within the Juriſdiction aforeſaid, to take and deſtroy the Ships of our ſaid Lord the King, and his Subjects.

And the Indictment further ſets forth, That the ſaid *Thomas Vaughan*, intending to ſtir up War and Rebellion, and to depoſe and deſtroy his ſaid Sovereign, did, at the Time aforeſaid, on the High Seas, about fourteen Leagues from *Deal*, aſſemble with other falſe Traitors, to the Number of fifteen Perſons, armed and provided in a Warlike Manner, and cruiſed near ſeveral Maritime Places, with an Intent to take and ſpoil the Ships and Goods of our Lord the King, and his Subjects; againſt the Duty of his Allegiance, *&c.*

His Irons taken off.

The Priſoner being brought to his Trial, and complaining of his Irons, the Chief Juſtice ordered them to be knocked off, that he might ſtand at Eaſe while he made his Defence; after which he pleaded Not Guilty: Then his Counſel, Mr. *Phipps*, being about to make

Exceptions to the Indictment muſt be before he pleads.

ſome Exceptions to the Indictment, the Court told him, He ought to have excepted to the Indictment before the Priſoner had pleaded; for it was not the Intent of the late Act to alter the Method of Proceeding: However, he might move in arreſt of Judgment, if he had any material Exceptions to make.

The Priſoner then deſiring that the Witneſſes might be examined apart, out of the Hearing of each other; the Court granted his Requeſt as a Favour, but told him, he could not demand it as his Right.

The King's Witneſſes being called, *Richard Crouch*, one of the Seamen belonging to the *Coventry* Man of War, was ſworn, who teſtified, That *The Coventry* coming to the *Buoy in the Nore* (at the *Thame's* Mouth,) they ſpied a two and twenty-Oar-Barge, called *The Loyal Clancarty*, of which the Priſoner was Commander, and perceived he had a Deſign upon two Pinks that lay there, but *The Coventry* coming up, prevented it. That *The Coventry* chaſed *The Loyal Clancarty*, whereupon ſhe run a-ground upon the Flats, and they purſued her with the Boats belonging to *The Coventry*, and took her. That there were five and twenty Men on Board the Barge, commanded by the Priſoner *Vaughan*, an *Iriſhman*; and that they came from *France* with a Deſign to burn the Ships in the *Nore*, as they underſtood.

Then *Edmund Courtney*, another Witneſs was called, to prove that *Vaughan*, the Priſoner run away to *France* with a Cuſtom-Houſe Boat: But his Counſel objected to this Evidence, becauſe this Fact was not mentioned in the Indictment; for, by the late Act for regulating Trials of Treaſon, no Evidence was to be admitted of an Overt-Act, not expreſly laid in the Indictment.

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No Evidence to be given of a Fact not laid.

To which the King's Counſel anſwered, That in a Indictment for compaſſing the King's Death, indeed, the Overt-Acts muſt be laid; becauſe the compaſſing or conſpiring the King's Death could not be diſcovered, but by ſuch Overt-Acts: But levying War, and adhering to the King's Enemies, were Overt-Acts of themſelves, and needed no other Acts to manifeſt them.

Whereupon the Chief Juſtice *Holt* declared his Opinion, That an Indictment for levying War, or adhering to the King's Enemies, generally was not good, unleſs it was alledged in what Manner the Party levied War, or adhered to the King's Enemies: And if they did expreſs in what Manner he levied War, or adhered to them, no Evidence ought to be given of any other Kind of War or Adherence that was not ſpecified in the Indictment. If it did not tend to prove ſome Fact that was ſpecially laid in it, They could not give Evidence of a diſtinct Act, which had no Relation to the Overt-Act laid in the Indictment.

The Court thereupon directed the Counſel to prove what was done in *The Loyal Clancarty*; and it being demanded of *Crouch* the Witneſs, How he knew *Vaughan* was an *Iriſhman? Crouch* anſwered, He heard *Vaughan* tell the Lieutenant ſo, as he paſſed by; and he thought the Crew were all either *Engliſh*, *Scotch*, *Iriſh* or *Dutch*; he did not know whether there were any *French* amongſt them.

Thomas Noden, another Seaman belonging to the *Coventry* Man of War, was ſworn, and teſtified, That as they were ſailing by the *Nore* and the *Gunfleet*, their Captain ſpied a ſmall Veſſel ſailing by the Sands, and ſuppoſing her to be a *French* Privateer, fired a Gun at her, but ſhe would not come to; whereupon they manned out their Boats, and came pretty near her, and ſhe ran a-ground: That the Long-boat belonging to *The Coventry* alſo ſtruck upon the Sands; and they waded after the Enemy (who had quitted their Veſſel) near half a League, and took all the Men, as well as the Veſſel: That it was a twenty-two-Oared Barge, called *The Clancarty*, and commanded by Capt. *Vaughan*, the Priſoner. That they had three or four and twenty Men on Board, ſeveral of whom were *French*, and they found in the Veſſel a Blunderbuſs, ſome ſmall Arms, and a conſiderable Quantity of Hand-Granadoes; and every Man had his Cartridge-box.

Samuel Oldham, another of the Crew belonging to the *Coventry*, confirmed the Teſtimony of the former Witneſſes; but ſaid, there were a Dozen Foreigners taken on board the *Clancarty*, whether *French* or *Dutch*, he could not tell, becauſe he could not ſpeak either.

Who ſhall be deemed Enemies, and not Pirates.

Hereupon the Chief Juſtice obſerved, If they were all *Dutchmen*, and appeared in a hoſtile Manner againſt the King of *England*'s Subjects, they were to be deemed Enemies, though their State was in League with ours.

The

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The Priſoners Counſel replied, In the Indictment they were called, *Subditi Gallici*, *French* Subjects, which they could not be by any Conſtruction: But the Court ſaid, The *French* King's Commiſſion prevented their being Pirates; and by Virtue of that Commiſſion, they might be termed his Subjects, with Reſpect to any other State but their own: Though they were not *Frenchmen*, they were *Gallici Subditi*, being in the *French* King's Service.

Robert Bub, another of the *Coventry*'s Crew, teſtified, That the Night before *The Clancarty* was taken, *The Coventry* was at Anchor in the *Nore:* And, having taken down their Pennant, *The Clancarty* rounded their Ship two or three Times, taking her for a Merchant Ship; and that in the Morning *The Coventry* weighed and purſued her; and *The Clancarty* was taken by their Boats, with all her Crew, as the former Witneſſes teſtified: That the Pilot on Board them, who was an *Engliſhman*, declared their Deſign was to burn the Ships at *Sheerneſs:* And *Vaughan* himſelf acknowledged he was an *Iriſhman*, and came from *Calais*.

Cruttenden, the Marſhal of *Dover*, alſo depoſed, That *Vaughan* the Priſoner directed him to enter his Name in his Book, by the Name of *Thomas Vaughan*, an *Iriſhman*; but he was then in Drink: But when *Vaughan* was carried before a Juſtice next Morning, he denied, at his Examination, that he was an *Iriſhman*, but ſaid he was a *Frenchman*, born at *Martinico* in the *Weſt-Indies*.

The Priſoner's Defence.

The Priſoner's Counſel hereupon obſerved, That the Indictment was not proved; for there it was ſaid, That the *French* King fitted out *The Loyal Clancarty:* That Capt. *Thomas Vaughan* was Commander, and that ſeveral *Frenchmen*, Subjects of the *French* King, were put on board: But one Witneſs ſaid, There were one or two *Frenchmen*; another, that there were none; a third, that they were Foreigners, but he could not tell of what Nation: That there was no Proof of the Priſoner's being Captain of *The Clancarty*, or that he had committed one Act of Hoſtility. All the Witneſſes teſtified, that *The Clancarty* made no Attempt to attack *The Coventry*, but, on the contrary, run away from her.

They obſerved alſo, That the Words of the Indictment were, that he came *ad prædandum ſuper altum mare:* Whereas *Sheerneſs* was not *ſuper altum mare*, but *infra corpus comitatus*; and ſo not within the Indictment.

To this the King's Counſel anſwered, that the Words, Ships at *Sheerneſs*, did not imply, Ships that lay within the Town of *Sheerneſs*, but off-*Sheerneſs*, which was *altum mare*.

The Priſoner's Counſel replied, They ought alſo to prove that he was Captain of *The Clancarty* at that Time; for the Indictment ſaid, *Ad tunc fuit Capitaneus & Miles*,

The Court ſaid, The Witneſſes proved he acted as Captain: And beſides, one of the Overt-Acts laid of his adhering to the King's Enemies, was, That he put himſelf a Soldier on board the ſaid Ship.

Dr. *Oldys*, another of the Priſoner's Counſel, anſwered, This Proof was built on the Sayings of People who had no Authority to examine them: But what he chiefly inſiſted on was, that they had failed in the Foundation of the Treaſon; for they had not proved the Priſoner a Subject of *Britain:* For as to the ſaying, over Night, when he was drunk, that he was an *Iriſhman*, the ſame Witneſſes atteſted, That, when he was examined next Morning by the Juſtices of Peace, he affirmed he was a *Frenchman*; ſo that the Proof was rather againſt them: And beſides, they had Witneſſes to prove he was a Native of *Martinico*.

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Then the Priſoner called ſeveral Witneſſes, who teſtified, They knew him at *Martinico*; and one depoſed, That he was at his Father's, *Thomas Vaughan*'s, in that Iſland, when the Priſoner was chriſtened; but they did not agree in their Evidence. And the King's Counſel called other Witneſſes, who contradicted theſe, and ſwore poſitively, That the Priſoner was a Native of *Galway* in *Ireland:* And of them, an Inhabitant of *Galway*, produced a Letter from the Priſoner, wherein he deſired he would not appear againſt him.

The Priſoner's Counſel, on the other hand, produced Witneſſes, who teſtified, That the King's Witneſſes were Men of bad Characters; and ſuggeſted, that there was another *Thomas Vaughan* of *Galway*, who died ten or a Dozen Years ago; but affirmed, that the Priſoner was a *Frenchman*.

The Evidence being cloſed, the Chief Juſtice proceeded to direct the Jury, and ſaid,

The Chief Juſtice's Directions to the Jury.

Gentlemen of the Jury, The Priſoner at the Bar, *Thomas Vaughan*, ſtands indicted for High Treaſon, for adhering to the King's Enemies, *viz.* That he put himſelf as a Soldier in the Service of the *French* King, in a Veſſel called *The Loyal Clancarty*, with divers other Perſons on board her, that were Subjects to the *French* King, and Enemies to the King of *England*, with a Deſign to burn the King's and his Subjects Ships; and for that Purpoſe went in that Ship. That the Priſoner was on board the Ship, and with ſuch a Deſign, is proved, without all Contradiction by ſeveral Witneſſes that have been produced; that is, that the two-and-twenty-Oar Barge, which is the ſame called *The Loyal Clancarty*, lay hovering about the *Buoy in the Nore*; thoſe Men in *The Coventry* imagining they had ſome Deſign of Miſchief to the Ships, and they made after him with *The Coventry*. It was apprehended, by Capt. *Vaughan* and his Crew, that *The Coventry* would be too hard for them, and ſo they did ſubmit and were taken: And being examined upon what Account he came on our Coaſts, it is confeſſed by him, That he came with a Deſign to burn our Ships. You may obſerve what Sort of Men were on board. You have heard it proved to you, that *Cruttenden*, the Marſhal of *Dover*, entered thoſe Perſons taken on board the *French* Veſſel, of what Nation, and what Quality they were; and there were about a Dozen of theſe *Frenchmen*, for they were entered as ſuch. Now for a Subject of *England* to join with the King's Enemies, in Purſuit of a Deſign to burn or take any of the King's, or his Subjects Ships, that is an Adherence to the King's

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King's Enemies. But it appears, not only that Capt. *Vaughan* was in their Company, but that he was their Commander; which commanding the Veſſel, on board which were *French* Subjects, Enemies of the King, and the Kingdom of *England*, is High Treaſon, and the particular Fact of Treaſon for which he is indicted. And it appears that he had a Commiſſion from the *French* King to command this Veſſel, *The Loyal Clancarty*.

Now the Priſoner having this Commiſſion to be Commander of this Veſſel, though they that ſerved under him were not native *Frenchmen*, but other Foreigners; yet their ſubjecting themſelves to him, acting by Virtue or Colour of that Commiſſion, makes them to be the *French* King's Subjects, during their Continuance in their Service; for otherwiſe all Prizes which they ſhould take would make them to be Pirates; which none will pretend to maintain, when they acted by a Commiſſion from a Sovereign Prince, that was an Enemy. And if they ſhall cruize upon our Coaſts, with a Deſign to take or deſtroy any of the King's, or his Subjects Ships, they are Enemies, though they were the Subjects of a Prince or State in Amity with the King of *England*. But, at this Time, there is no Neceſſity of entering upon this Queſtion, becauſe it is proved, that diverſe who were on board this Veſſel, were *Frenchmen*; the joining with whom, in Proſecution of ſuch a Deſign, is that Kind of High Treaſon of adhering to the King's Enemies. So that if Capt. *Vaughan* was a Subject of *England*, he is proved guilty of High Treaſon, if you believe the Evidence.

You are, therefore to conſider the Evidence on both Sides. The Queſtion principally is, Whether the Priſoner be a Subject of the King of *England?* If you are ſatisfied that he is not an *Engliſh* Subject, but a *French* Man, then he is not guilty of this High Treaſon; but if you are ſatisfied, by the Series of the whole Evidence, that he is an *Iriſhman*, and that he had a Commiſſion from the *French* King, and that he cruiſed upon our *Engliſh* Coaſts, in Company with the King's Enemies, with a Deſign to take, burn, or deſtroy any one of the King's, or his Subject's Ships, you are to find him guilty of the High Treaſon whereof he ſtands indicted; otherwiſe you are to acquit him.

Vaughan *convicted.*

The Jury being withdrawn, after a ſhort Time they returned into Court with their Verdict, That the Priſoner was GUILTY.

And it being demanded, What he could ſay, why Judgment ſhould not paſs upon him? He anſwered, he referred himſelf to his Counſel: Whereupon Mr. *Phipps* objected, That the Treaſon of adhering to the King's Enemies was not well laid in the Indictment; for it did not ſay, the Priſoner adhered to the King's Enemies *againſt the King*, and poſſibly he might join with the King's Enemies againſt *Holland* and *Spain*: To which the Court anſwered, That the adhering to the King's Enemies againſt his Allies, was an encouraging them, and enabled them to do Miſchief to the King:----That the 25 *Edw.* III. defined the Treaſon to be in adhering to the King's Enemies, and expreſſed the Overt Act to be a giving them Aid or Comfort. It was ſufficient to alledge the Treaſon in the Words of the Statute, *adhering to the King's Enemies*; and if the Overt-Act alledged, ſhewed it to be againſt the King, and in Purſuance of his Adherence, that was ſufficient. Mr. *Phipps* replyed, That the Indictment only ſaid, he went a cruiſing, whereas, they ought to have alledged ſome Act of Hoſtility: But the Court over-ruled that Objection, and ſaid, that the cruiſing upon the Coaſt with an armed Veſſel was an hoſtile Act, and that their going on Board, and putting themſelves in a Poſture to attack the King's Ships, was an actual levying of War: And the Court having over-ruled ſome other leſs material Exceptions to the Indictment, Sentence was paſſed on the ſaid *Thomas Vaughan* as a Traitor, and he was executed in Purſuance of it.

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Moves in Arreſt of Judgment.

The Exceptions over-ruled.

He is condemned and executed.

Here are ſome nice Diſtinctions between Piracy and Treaſon, and in what Caſes a Man ſhall be deemed a Subject, and in what Circumſtances a Foreigner.

Remarks on Vaughan's Trial.

Particularly it is reſolved, That of whatever Nation a Man is, his acting by a Commiſſion from a Sovereign Prince, prevents his being treated as a Pirate, and that he ſhall be deemed a Subject of that Prince under whom he acts againſt all others but his own natural Sovereign; and as to him, he ſhall be deemed a Traitor, if the Prince he acts under be an Enemy to his own Sovereign; as he ſhall be alſo, if he confederates with the Subjects of another Power, in Amity with his Prince, againſt his own Country: But if he commits hoſtile Acts on others, without a Commiſſion from ſome Sovereign Prince, he is a Pirate.

Their Caſe.

And here we find it reſolved again, That no Overt-Act ſhall be given in Evidence, unleſs it be laid in the Indictment, except it conduce to prove a Fact, that is laid in the Indictment.

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Knolly's *Caſe.*

Proceedings againſt CHARNES KNOLLYS, Eſq; (commonly called Earl of *Banbury*) for the Murder of *Philip Lawſon*, Gent. which Proceedings were begun in the Year 1692, and continued to the Year 1697.

1697. 8 W. III.

This not being a State Trial, I ſhall content my ſelf with giving a ſhort Abſtract of the Proceedings.

AN Indictment was found againſt the ſaid *Charles Knollys*, by the Grand Jury of the County of *Middleſex*, in *December*, 1692, charging him with the Murder of the ſaid *Philip Lawſon*, which was removed by *Certiorari* into the *King's-Bench*, in *Hillary* Term 4 and 5 *W. & M.* Where the Defendant being arraigned, pleaded a Miſnomer in Abatement

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ment of the Indictment, ſetting forth, That he was Earl of *Banbury*, his Anceſtors having been ſo created by Letters Patent from the Crown. The Attorney General replied, that he had petitioned the Houſe of Peers to be tried before them on this Indictment, and they had adjudged thereupon, that he had no Right to the Earldom: To which Replication the Defendant demurred, and Mr. Attorney joined in Demurrer: And Arguments were heard on each Part by the Court of *King's-Bench*, but no Judgment was given thereupon; for the Court of *King's-Bench* differed with the Houſe of Peers, as to his Title to the Earldom; and ſo the Defendant was never tried for the ſaid Murder.

In *January* 1697, the ſaid *Charles Knollys* petitioned his Majeſty King *William*, to grant him a Summons to Parliament, as Earl of *Banbury*, and to recommend his Caſe to the Examination of the Houſe of Lords; and his Majeſty referred it to them accordingly, to conſider the Defendant's Claim to that Earldom: Whereupon, the Lords repreſented to the King, That about five Years before, the ſame Perſon did petition the Houſe of Lords, that, being indicted for the Death of *Philip Lawſon*, he might be admitted to a Trial by his Peers; and having heard him by his Counſel, as to his Title to the ſaid Earldom, the Houſe came to this Reſolution and Judgment, That the Petitioner had no Right to the Title of Earl of *Banbury*, and ordered his Petition to be diſmiſſed; which Judgment the Lords ſaid, they had great Reaſon to believe, was not made known to his Majeſty at the Time of the ſaid Reference.

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Remarks on this Caſe.

In this Proceeding it appears, that the *King's-Bench* held, that they were empowered to judge of a Nobleman's Title, and whether he made out his Deſcent from his Anceſtors; for notwithſtanding the Houſe of Peers had determined he had no Title, that Court did declare, that the Defendant had a Title to the Earldom of *Banbury*, and conſequently that he could not be tried as a Commoner for Murder in the *King's-Bench:* And if I underſtand the Lord Chief Juſtice *Holt* aright, he was of Opinion, That the Houſe of Peers were not a proper Court to try the Fact, being a Right of Inheritance; becauſe they could not command a Jury to be impanelled: And if on one Side, the Lords carried their Point by voting the Defendant out of the Houſe, the *King's-Bench* prevented his being tried as a Commoner for that Murder.

1699. 11 W. III.

Lords Warwick *and* Mohun,

The Trial of EDWARD Earl of *Warwick* and *Holland*, and others, for *Murder*, before the Houſe of Peers, in *Weſtminſter-Hall*, on the 28th and 29th of *March*, 1699. 11 *W.* III.

1699. 11 W. III.

This being a Proſecution for Murder, and no State Trial, I ſhall give but a ſhort Abſtract of the Caſe.

Their Caſe.

THE Indictment charged the Earl of *Warwick*, the Lord *Mohun*, *Richard French*, *Roger James*, and *George Dockwra*, Gent. with the Murder of Captain *Richard Coote*.

It ſeems, theſe Gentlemen were drinking together on the 30th of *October* 1698, at *Lockett's*, the *Grey-hound*-Tavern in the *Strand*, where they ſtaid till after Midnight; and then happening to quarrel, they called for Chairs, and were carried to *Leiceſter-fields*, where they fought, three of a Side, in the Dark, when they could ſcarce diſtinguiſh each other: And in this Encounter Captain *Coote* was killed, and the Lord *Warwick* and Mr. *French* ſlightly wounded; and the Lord *Warwick*'s Sword appeared to be bloody up to the Hilt afterwards.

The Houſe of Peers having heard the Evidence, and the Obſervations of the King's Counſel upon it, came to a Reſolution That the Earl of *Warwick* was guilty of Manſlaughter, but not of Murder: Whereupon he claimed the Benefit of his Peerage, which is equivalent to Clergy; and he was thereupon diſcharged.

The Lord *Mohun* was tried the next Day for the ſame Murder; but it appearing he had endeavoured to prevent their fighting, and was not inſtrumental in the Death of Captain *Coote*, he was acquitted by the unanimous Opinion of the Houſe of Peers.

1699. 11 W. III.

Cowper's Trial.

The Trial of SPENCER COWPER, Eſq; JOHN MARSON, ELLIS STEVENS, and WILLIAM ROGERS, Gent. for *Murder*, at *Hertford* Aſſizes, before Mr. Baron *Hatſell*, on *Wedneſday* the 16th of *July*, 1699. 11 *W.* III.

1699. 11 W. III.

This being one of the moſt memorable Trials in our Age, and the World to this Day divided in their Opinions, concerning the Innocency of the Priſoners, it was thought proper to be compiled with the State Trials, though it was of a private Nature; and for the like Reaſons, I preſume, it will be expected I ſhould treat more largely of it in this Work, than I have of other Trials for Murder.

THE Priſoners being ſeverally arraigned, and pleading Not Guilty, it was demanded, If they would join in their Challenges, or challenge ſeparately? To which Mr. *Cowper* anſwered, If they ſhould challenge ſeparately, there muſt be ſo many ſeparate Trials; and therefore, to prevent the Trouble of the Court, they were content there ſhould be but one Challenge for all.

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King's Enemies. But it appears, not only that Capt. *Vaughan* was in their Company, but that he was their Commander; which commanding the Veſſel, on board which were *French* Subjects, Enemies of the King, and the Kingdom of *England*, is High Treaſon, and the particular Fact of Treaſon for which he is indicted. And it appears that he had a Commiſſion from the *French* King to command this Veſſel, *The Loyal Clancarty*.

Now the Priſoner having this Commiſſion to be Commander of this Veſſel, though they that ſerved under him were not native *Frenchmen*, but other Foreigners; yet their ſubjecting themſelves to him, acting by Virtue or Colour of that Commiſſion, makes them to be the *French* King's Subjects, during their Continuance in their Service; for otherwiſe all Prizes which they ſhould take would make them to be Pirates; which none will pretend to maintain, when they acted by a Commiſſion from a Sovereign Prince, that was an Enemy. And if they ſhall cruize upon our Coaſts, with a Deſign to take or deſtroy any of the King's, or his Subjects Ships, they are Enemies, though they were the Subjects of a Prince or State in Amity with the King of *England*. But, at this Time, there is no Neceſſity of entering upon this Queſtion, becauſe it is proved, that diverſe who were on board this Veſſel, were *Frenchmen*; the joining with whom, in Proſecution of ſuch a Deſign, is that Kind of High Treaſon of adhering to the King's Enemies. So that if Capt. *Vaughan* was a Subject of *England*, he is proved guilty of High Treaſon, if you believe the Evidence.

You are, therefore to conſider the Evidence on both Sides. The Queſtion principally is, Whether the Priſoner be a Subject of the King of *England*? If you are ſatisfied that he is not an *Engliſh* Subject, but a *French* Man, then he is not guilty of this High Treaſon; but if you are ſatisfied, by the Series of the whole Evidence, that he is an *Iriſhman*, and that he had a Commiſſion from the *French* King, and that he cruiſed upon our *Engliſh* Coaſts, in Company with the King's Enemies, with a Deſign to take, burn, or deſtroy any one of the King's, or his Subject's Ships, you are to find him guilty of the High Treaſon whereof he ſtands indicted; otherwiſe you are to acquit him.

Vaughan *convicted.*

The Jury being withdrawn, after a ſhort Time they returned into Court with their Verdict, That the Priſoner was GUILTY.

And it being demanded, What he could ſay, why Judgment ſhould not paſs upon him? He anſwered, he referred himſelf to his Counſel: Whereupon Mr. *Phipps* objected, That the Treaſon of adhering to the King's Enemies was not well laid in the Indictment; for it did not ſay, the Priſoner adhered to the King's Enemies *againſt the King*, and poſſibly he might join with the King's Enemies againſt *Holland* and *Spain*: To which the Court anſwered, That the adhering to the King's Enemies againſt his Allies, was an encouraging them, and enabled them to do Miſchief to the King:----That the 25 *Edw.* III. defined the Treaſon to be in adhering to the King's Enemies, and expreſſed the Overt Act to be a giving them Aid or Comfort. It was ſufficient to alledge the Treaſon in the Words of the Statute, *adhering to the King's Enemies*; and if the Overt-Act alledged, ſhewed it to be againſt the King, and in Purſuance of his Adherence, that was ſufficient. Mr. *Phipps* replyed, That the Indictment only ſaid, he went a cruiſing, whereas, they ought to have alledged ſome Act of Hoſtility: But the Court over-ruled that Objection, and ſaid, that the cruiſing upon the Coaſt with an armed Veſſel was an hoſtile Act, and that their going on Board, and putting themſelves in a Poſture to attack the King's Ships, was an actual levying of War: And the Court having over-ruled ſome other leſs material Exceptions to the Indictment, Sentence was paſſed on the ſaid *Thomas Vaughan* as a Traitor, and he was executed in Purſuance of it.

1696. 8 W. III.

Moves in Arreſt of Judgment.

The Exceptions over-ruled.

He is condemned and executed.

Here are ſome nice Diſtinctions between Piracy and Treaſon, and in what Caſes a Man ſhall be deemed a Subject, and in what Circumſtances a Foreigner.

Remarks on Vaughan's Trial.

Particularly it is reſolved, That of whatever Nation a Man is, his acting by a Commiſſion from a Sovereign Prince, prevents his being treated as a Pirate, and that he ſhall be deemed a Subject of that Prince under whom he acts againſt all others but his own natural Sovereign; and as to him, he ſhall be deemed a Traitor, if the Prince he acts under be an Enemy to his own Sovereign; as he ſhall be alſo, if he confederates with the Subjects of another Power, in Amity with his Prince, againſt his own Country: But if he commits hoſtile Acts on others, without a Commiſſion from ſome Sovereign Prince, he is a Pirate.

And here we find it reſolved again, That no Overt-Act ſhall be given in Evidence, unleſs it be laid in the Indictment, except it conduce to prove a Fact, that is laid in the Indictment.

1697. 8 W. III.

Knolly's *Caſe.*

Proceedings againſt CHARNES KNOLLYS, Eſq; (commonly called Earl of *Banbury*) for the Murder of *Philip Lawſon*, Gent. which Proceedings were begun in the Year 1692, and continued to the Year 1697.

1697. 8 W. III.

This not being a State Trial, I ſhall content my ſelf with giving a ſhort Abſtract of the Proceedings.

AN Indictment was found againſt the ſaid *Charles Knollys*, by the Grand Jury of the County of *Middleſex*, in *December*, 1692, charging him with the Murder of the ſaid *Philip Lawſon*, which was removed by *Certiorari* into the *King's-Bench*, in *Hillary* Term 4 and 5 *W.* & *M.* Where the Defendant being arraigned, pleaded a Miſnomer in Abatement

1697. 8 W. III.

ment of the Indictment, ſetting forth, That he was Earl of *Banbury*, his Anceſtors having been ſo created by Letters Patent from the Crown. The Attorney General replied, that he had petitioned the Houſe of Peers to be tried before them on this Indictment, and they had adjudged thereupon, that he had no Right to the Earldom: To which Replication the Defendant demurred, and Mr. Attorney joined in Demurrer: And Arguments were heard on each Part by the Court of *King's-Bench*, but no Judgment was given thereupon; for the Court of *King's-Bench* differed with the Houſe of Peers, as to his Title to the Earldom; and ſo the Defendant was never tried for the ſaid Murder.

In *January* 1697, the ſaid *Charles Knollys* petitioned his Majeſty King *William*, to grant him a Summons to Parliament, as Earl of *Banbury*, and to recommend his Caſe to the Examination of the Houſe of Lords; and his Majeſty referred it to them accordingly, to conſider the Defendant's Claim to that Earldom: Whereupon, the Lords repreſented to the King, That about five Years before, the ſame Perſon did petition the Houſe of Lords, that, being indicted for the Death of *Philip Lawſon*, he might be admitted to a Trial by his Peers; and having heard him by his Counſel, as to his Title to the ſaid Earldom, the Houſe came to this Reſolution and Judgment, That the Petitioner had no Right to the Title of Earl of *Banbury*, and ordered his Petition to be diſmiſſed; which Judgment the Lords ſaid, they had great Reaſon to believe, was not made known to his Majeſty at the Time of the ſaid Reference.

1697. 8 W. III.

Remarks on this Caſe.

In this Proceeding it appears, that the *King's-Bench* held, that they were empowered to judge of a Nobleman's Title, and whether he made out his Deſcent from his Anceſtors; for notwithſtanding the Houſe of Peers had determined he had no Title, that Court did declare, that the Defendant had a Title to the Earldom of *Banbury*, and conſequently that he could not be tried as a Commoner for Murder in the *King's-Bench:* And if I underſtand the Lord Chief Juſtice *Holt* aright, he was of Opinion, That the Houſe of Peers were not a proper Court to try the Fact, being a Right of Inheritance; becauſe they could not command a Jury to be impanelled: And if on one Side, the Lords carried their Point by voting the Defendant out of the Houſe, the *King's-Bench* prevented his being tried as a Commoner for that Murder.

1699. 11 W. III.

Lords Warwick *and* Mohun,

The Trial of EDWARD Earl of *Warwick* and *Holland*, and others, for *Murder*, before the Houſe of Peers, in *Weſtminſter-Hall*, on the 28th and 29th of *March*, 1699. 11 *W.* III.

1699. 11 W. III.

This being a Proſecution for Murder, and no State Trial, I ſhall give but a ſhort Abſtract of the Caſe.

Their Caſe.

THE Indictment charged the Earl of *Warwick*, the Lord *Mohun*, *Richard French*, *Roger James*, and *George Dockwra*, Gent. with the Murder of Captain *Richard Coote*.

It ſeems, theſe Gentlemen were drinking together on the 30th of *October* 1698, at *Lockett*'s, the *Grey-hound*-Tavern in the *Strand*, where they ſtaid till after Midnight; and then happening to quarrel, they called for Chairs, and were carried to *Leiceſter-fields*, where they fought, three of a Side, in the Dark, when they could ſcarce diſtinguiſh each other: And in this Encounter Captain *Coote* was killed, and the Lord *Warwick* and Mr. *French* ſlightly wounded; and the Lord *Warwick*'s Sword appeared to be bloody up to the Hilt afterwards.

The Houſe of Peers having heard the Evidence, and the Obſervations of the King's Counſel upon it, came to a Reſolution That the Earl of *Warwick* was guilty of Manſlaughter, but not of Murder: Whereupon he claimed the Benefit of his Peerage, which is equivalent to Clergy; and he was thereupon diſcharged.

The Lord *Mohun* was tried the next Day for the ſame Murder; but it appearing he had endeavoured to prevent their fighting, and was not inſtrumental in the Death of Captain *Coote*, he was acquitted by the unanimous Opinion of the Houſe of Peers.

1699. 11 W. III.

Cowper's Trial.

The Trial of SPENCER COWPER, Eſq; JOHN MARSON, ELLIS STEVENS, and WILLIAM ROGERS, Gent. for *Murder*, at *Hertford* Aſſizes, before Mr. Baron *Hatſell*, on *Wedneſday* the 16th of *July*, 1699. 11 *W.* III.

1699. 11 W. III.

This being one of the moſt memorable Trials in our Age, and the World to this Day divided in their Opinions, concerning the Innocency of the Priſoners, it was thought proper to be compiled with the State Trials, though it was of a private Nature; and for the like Reaſons, I preſume, it will be expected I ſhould treat more largely of it in this Work, than I have of other Trials for Murder.

THE Priſoners being ſeverally arraigned, and pleading Not Guilty, it was demanded, If they would join in their Challenges, or challenge ſeparately? To which Mr. *Cowper* anſwered, If they ſhould challenge ſeparately, there muſt be ſo many ſeparate Trials; and therefore, to prevent the Trouble of the Court, they were content there ſhould be but one Challenge for all.

1699. 11 W. III.

Then the Pannel was called over, and there being ſo many challenged for the King and the Priſoners, that there was not a full Jury on the principal Pannel, Mr. *Cowper* moved, That the Counſel for the King might ſhew their Cauſe of Challenge, now the Pannel was gone through: To which Mr. *Jones*, of Counſel for the King, anſwered, That it never was put upon the King's Counſel to ſhew Cauſe; and inſiſting upon it, though the Judge was of another Opinion, Mr. *Cowper* gave it up, and others were added to the principal Pannel, till Twelve were ſworn.

The Indictment.

Then the Clerk of the Arraignments read the Indictment to the Priſoners in *Engliſh*, which ſet forth, That *Spencer Cowper*, late of the Pariſh of St. *John*'s, in the Town of *Hertford*, in the County of *Hertford*, Eſq; *John Marſon*, late of the Pariſh and County aforeſaid, Gent. *Ellis Stevens* and *William Rogers*, of the ſaid Pariſh and County, Gent. not having the Fear of God before their Eyes, *&c.* did on the 13th Day of *March*, in the 11th Year of the King, at the Pariſh of St. *John*'s aforeſaid, make an Aſſault upon *Sarah Stout*, Spinſter, and a certain Rope about the Neck of the ſaid *Sarah Stout* did fix and bind, and the Neck and Throat of the ſaid *Sarah* did hold, ſqueeze, and gripe, and thereby the ſaid *Sarah Stout* did choak and ſtrangle, of which choaking and ſtrangling ſhe inſtantly died; and ſo the ſaid *Spencer Cowper*, *John Marſon*, *Ellis Stevens*, and *William Rogers*, did kill and murder her: And the ſaid *Sarah Stout* being ſo choaked and ſtrangled, they the ſaid *Spencer Cowper*, &c. in order to conceal the ſaid Murder, did afterwards throw her into a certain River called the *Priory River*; againſt the King's Peace, *&c.*

Mr. *Jones* afterwards opened the Indictment and the Evidence, in the following Manner.

Mr. Jones *opens the Indictment and the Evidence.*

May it pleaſe your Lordſhip, and you Gentlemen that are ſworn, I am of Counſel for the King in this Cauſe, and it is upon an Indictment, by which the Gentlemen at the Bar ſtand accuſed for one of the fouleſt and moſt wicked Crimes almoſt that any Age can remember; I believe in your Country you never knew a Fact of this Nature: For here is a young Gentlewoman of this County murdered and ſtrangled in the Night-Time. The Thing was done in the dark, therefore the Evidence cannot be ſo plain as otherwiſe might be.

After ſhe was ſtrangled and murdered, ſhe was carried and thrown into a River, to ſtifle the Fact, and to make it ſuppoſed ſhe had murdered her ſelf; ſo that it was indeed, if it prove otherwiſe, a double Murder; a Murder accompanied with all the Circumſtances of Wickedneſs and Villany that I remember in all my Practice, or ever read of.

This Fact, as it was committed in the Night-Time, ſo it was carried very ſecret; and it is very well we have had ſo much Light as we have, to give ſo much Satisfaction: For we have here in a Manner two Trials, one to acquit the Party that is dead, and to ſatisfy the World, and vindicate her Reputation that ſhe did not murder her ſelf, but was murdered by other Hands. For my Part, I ſhall never, as Counſel in the Caſe of Blood, aggravate; I will not improve or enlarge the Evidence at all: It ſhall be only my Buſineſs to ſet the Fact as it is, and to give the Evidence, and ſtate it as it ſtands here in my Inſtructions.

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My Lord, for that Purpoſe, to lead to the Fact, it will be neceſſary to inform you, That upon *Monday* the 13th of *March*, the firſt Day of the laſt Aſſizes here, Mr. *Cowper*, one of the Gentlemen at the Bar, came to this Town, and lighted at Mr. *Barefoot*'s Houſe, and ſtaid there ſome Time, I ſuppoſe, to dry himſelf, the Weather being dirty; but ſent his Horſe to Mrs. *Stout*'s, the Mother of this Gentlewoman. Some Time after, he came thither himſelf, and dined there, and ſtaid till Four in the Afternoon; and at Four, when he went away, he told them he would come and lodge there that Night, and ſup.

According to his Word he came there, and had the Supper he deſired: After Supper, Mrs. *Stout*, the young Gentlewoman, and he ſat together till near Eleven o' Clock. At Eleven o' Clock there was Orders given to warm his Bed, openly, to warm his Bed in his hearing. The Maid of the Houſe, Gentlemen, upon this went up Stairs to warm his Bed, expecting the Gentleman would have come up and followed her before ſhe had done; but, it ſeems, while ſhe was warming the Bed, ſhe heard the Door clap together; and the Nature of that Door is ſuch, that it makes a great Noiſe at the clapping of it to, that any Body in the Houſe may be ſenſible of any one's going out. The Maid, upon this, was concerned, and wondered at the Meaning of it, he promiſing to lie there that Night; ſhe came down, but there was neither Mr. *Cowper* nor Mrs. *Stout*; ſo that we ſuppoſe, and for all that we can find and learn, they muſt go out together. After their going out, the Maid and Mother came into the Room, and the young Gentlewoman not returning, nor Mr. *Cowper*, they ſat up all Night in the Houſe, expecting what Time the young Gentlewoman would return. The next Morning after they had ſat up all Night, the firſt News of this Lady was, that ſhe lay floating and ſwimming in the Water by the Mill-Dam: Upon that, there were ſeveral Perſons called; for it was a Surprize how this ſhould come to paſs. There ſhe lay floating with her Petticoats and Apron, but her Night-rail and Morning-gown were off, and one of them not found till ſome Time after; and the Maid will give you an Account how it came to be found.

This made a great Noiſe in the Country, for it was very extraordinary, it happening that from the Time the Maid left Mr. *Cowper* and this young Gentlewoman together, ſhe was not ſeen or heard of till next Morning, when ſhe was found in this Condition, with her Eyes broad open, floating upon the Water.

When her Body came to be viewed, it was very much wondered at; for, in the firſt Place, it is contrary to Nature, that any Perſons that drown themſelves ſhould float upon the Water. We have ſufficient Evidence, That it is a Thing that never was: If Perſons come alive into the Water, then they ſink; if dead, then they ſwim;

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ſwim; that made ſome more curious to look into this Matter. At firſt it was thought that ſuch an Accident might happen, though they could not imagine any Cauſe for this Woman to do ſo, who had ſo great Proſperity, had ſo good an Eſtate, and had no Occaſion to do an Action upon herſelf ſo wicked, and ſo barbarous; nor cannot learn what Reaſon ſhe had to induce her to ſuch a Thing. Upon View of the Body, it did appear, there had been Violence uſed to the Woman; there was a Creaſe round her Neck, ſhe was bruiſed about her Ear, ſo that it did ſeem as if ſhe had been ſtrangled, either by Hands or a Rope.

Gentlemen, upon the Examination of this Matter, it was wondered how this Matter came about; it was dark and blind: The Coroner at that Time, nor theſe People, had no Evidence given, but the ordinary Evidence, and it paſſed in a Day.

We muſt call our Witneſſes to this Fact, that of Neceſſity you muſt conclude ſhe was ſtrangled, and did not drown herſelf: If we give you as ſtrong a Proof, as can be upon the Nature of the Fact, that ſhe was ſtrangled, then the ſecond Matter under your Enquiry will be, to know who, or what Perſons ſhould be the Men that did the Fact. I told you before, it was, as all wicked Actions are, a Matter of Darkneſs, and done in Secret, to be kept as much from the Knowledge of Men as was poſſible.

Truly, Gentlemen, as to the Perſons at the Bar, the Evidence of the Fact will be very ſhort, and will be to this Purpoſe.

Mr. *Cowper* was the laſt Man unfortunately in her Company; I could wiſh he had not been ſo with all my Heart: 'Tis a very unfortunate Thing that his Name ſhould, upon this Occaſion, be brought upon the Stage: But then, my Lord, it was a ſtrange Thing, here happens to be three Gentlemen, Mr. *Marſon*, Mr. *Rogers*, and Mr. *Stevens:* As to theſe three Men, my Lord, I don't hear of any Buſineſs they had here, unleſs it was to do this Matter, to ſerve ſome Intereſt or Friend that ſent them upon this Meſſage: For, my Lord, they came to Town (and in Things of this Nature, 'tis well we have this Evidence; but, if we had not been ſtreightened in Time, it would have brought out more; theſe Things come out ſlowly), theſe Perſons, Mr. *Stevens*, Mr. *Rogers*, and Mr. *Marſon*, came to Town here, on the 13th of *March* laſt, the Aſſize-Day. My Lord, when they came to Town, they came to an Houſe, and took Lodging at one *Gurrey*'s; they took a Bed for two, and went out of their Lodging, having taken a Room with a large Bed in it; and afterwards they went to the *Glove and Dolphin*, and then, about Eight o' Clock, one *Marſon* came to them there; in what Company they came, your Lordſhip, and the Jury, will know by and by: They ſtaid there, my Lord, at the *Glove*, from Eight o' Clock to Eleven, as they ſay. At Eleven theſe three Gentlemen came all into their Lodging together at this *Gurrey*'s. My Lord, when they came in, it was very obſervable amongſt them, unleſs there had been a Sort of Fate in it; firſt, that they ſhould happen to be in the Condition they were; and, ſecondly, fall upon the Diſcourſe they did at that Time: For, my Lord, they called for Fire, and the Fire was made them; and, while the People of the Houſe were going about, they obſerved and heard theſe Gentlemen talk of Mrs. *Sarah Stout*; that happened to be their Diſcourſe: One ſaid to the other, *Marſon*, She was an old Sweetheart of yours: Ay, ſaith he, but ſhe caſt me off; but I reckon, by this Time, a Friend of mine has done her Buſineſs----Another Piece of Diſcourſe was, I believe a Friend of mine is even with her by this Time. They had a Bundle of Linen with them; but what it was is not known; and one takes the Bundle and throws it upon the Bed: Well, ſaith he, her Buſineſs is done: Mrs. *Sarah Stout*'s courting Days are over; and they ſent for Wine, my Lord: So, after they had drank of the Wine, they talked of it, and one pulled out a great deal of Money; ſaith one to another, What Money have you ſpent to Day? Saith the other, Thou haſt had 40 or 50 *l.* for thy Share: Saith the other, I will ſpend all the Money I have, for Joy the Buſineſs is done.

My Lord, this Diſcourſe happened to be among them, which made People of the Houſe conſider and bethink themſelves; when the next Day they heard of this Mrs. *Stout*'s being found in the Water, this made them recollect and call to Mind all theſe Diſcourſes.

My Lord, after theſe Gentlemen had ſtaid there all Night, next Morning, truly, it was obſerved (and I ſuppoſe ſome Account will be given of it) that Mr. *Cowper* and they did meet together, and had ſeveral Diſcourſes; and that very Day went out of Town; and, I think, as ſoon as they came to *Hoddeſon*, made it all their Diſcourſe and Buſineſs to talk of Mrs. *Stout*.

My Lord, we will call our Witneſſes, and prove all theſe Facts that I have opened to your Lordſhip; and then, I hope, they will be put to give you ſome Account how all theſe Matters came about.

The Evidence of Sarah Walker.

Then *Sarah Walker*, Servant to the deceaſed Mrs. *Stout*, being called as a Witneſs for the King, teſtified, That on *Friday* before the laſt Aſſizes Mr. *Cowper*'s Wife ſent her Miſtreſs a Letter, acquainting her, She might expect her Husband at the Aſſizes, and he came in with the Judge accordingly the *Monday* following; and her Miſtreſs asking him, as he rode by, if he would alight, he ſaid, No; he would go and ſhew himſelf, but would ſend his Horſe preſently, and let her know at what Time he would come; but her Miſtreſs, thinking he had forgot, ſent her (the Witneſs) to know if he deſigned to come: He anſwered, He had Buſineſs; but came, however, in leſs than a Quarter of an Hour, and dined there: And going away about Four o' Clock, her Miſtreſs asked him, If he would lie there: He ſaid, Yes; and came at Nine o' Clock; and, having ſat about half an Hour, he asked for a Pen and Ink, and wrote a Letter to his Wife; after which, he deſired he might have Milk for his Supper, which the Witneſs brought him; and, when he had ſupped, her Miſtreſs bid her make a Fire in his Chamber; and, when ſhe came and told Mr.

Cowper

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Cowper ſhe had made one, he looked at her, but ſaid nothing; and her Miſtreſs, in his Hearing, bid her warm his Bed, which ſhe went up to do as theClock ſtruck Eleven, and about a quarter of an Hour after, ſhe heard the Houſe-Door ſhut, and thought he was gone to carry his Letter; but, coming down into the Parlour a quarter of an Hour after ſhe heard the Door ſhut, ſhe found no body there; both Mr. *Cowper* and her Miſtreſs were gone, and ſhe never ſaw her more alive.

Mr. *Cowper* deſiring ſhe would be particular as to the Time he went away, *Sarah Walker* anſwered, It was a quarter after Eleven by their Clock; but that went half an Hour faſter than the Town Clock.

Mr. *Cowper* demanding Why ſhe did not enquire after her Miſtreſs that Night? the Maid anſwered, She thought her Miſtreſs was with him, and could come to no Harm. Old Mrs. *Stout*, her Mother, was againſt her making any Enquiry; becauſe, if they did not find her, ſhe ſaid, it would alarm the Town; and there might be no Occaſion: However, they ſat up all Night in Expectation of their Return.

Mr. *Cowper* demanding If her Miſtreſs did not uſe to ſtay out allNight; or, if ſhe had not ſaid ſo? the Maid anſwered, No. Then he asked If her Miſtreſs was not melancholly? ſhe anſwered, She could not ſay but ſhe was melancholly; but ſhe imputed it to a Fit of Illneſs; ſhe knew no other Cauſe.

Mr. *Cowper* asking If ſhe did not buy Poiſon within this Twelvemonth, and by whoſe Order? ſhe anſwered, That ſhe (the Witneſs) had bought Poiſon twice, to poiſon aDog that broke ſome Things; but had no Order for it.

Mr. *Jones* demanded, if ſhe ever found her Miſtreſs inclined to do herſelf a Miſchief? ſhe anſwered, She never did.

Mr. *Jones* asking, If Mr. *Cowper*'s Horſe ſtood at her Miſtreſs's Houſe, and if Mr. *Cowper* ever returned to Mrs. *Stout*'s again? ſhe anſwered, His Horſe ſtood there, but Mr. *Cowper* never returned after that Night he went away, in the Manner ſhe related.

Mr. *Jones* asking, If Mr. *Cowper* told them he would lie there? the Maid anſwered, When he went from Dinner, he ſaid ſo.

Evidence of Mrs. Stout's *being found in the River.*

Then *Berry* the Miller was ſworn, and teſtified, That going out at Six in the Morning, to ſhoot a Fluſh of Water, he ſaw ſomething floating, which proved to be the Cloaths of the Deceaſed, her Body being five or ſix Inches under Water: That ſhe lay on her Right Side, her Right Arm being driven between the Stakes, which ſtood about a Foot aſunder: That the Water was then about five Foot deep: She did not appear at all ſwelled, and her Eyes were open.

John Venables teſtified, That he ſaw the Corps in the River, that ſhe lay on her Right Side, rather above the Water than under, inſomuch that one of her Ruffles appeared above the Water; and both this Witneſs and the laſt agreed that her Eyes were open, and that there were no Weeds, or any Thing under the Corps, to hinder it from ſinking.

Leonard Dell depoſed, That he ſaw the Corps floating, and that Part of her Cloaths were above the Water; that her Face might alſo be ſeen, it was ſo near the Surface, and her Eyes were open; and agreed with the former Witneſſes, that ſhe lay on her Right Side, with her Head and Right Arm between the Stakes or Piles, that were fixed in the River: He believed there might be about five Foot Water, and there was nothing under her to prevent the ſinking of the Corps: That he and another took the Corps out of the Water, and laid it on the Bank, where it remained an Hour: She was laced, and he did not perceive her to be at all ſwelled, or that any Water came out of the Corps on moving it, only a Froth came out of her Mouth and Noſtrils, about as much as he could hold in his Hand.

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John Ulfe alſo teſtified, That he helped to take her out of the Water, and ſhe lay on one Side between the Stakes; and that upon taking her out, noWater came from her, only ſome Froth at her Noſtrils: That the Stakes did not bear up the Corps, and there was nothing under it to keep it from ſinking.

Katharine Dew depoſed, That ſhe ſaw the Corps taken out of the Water; that ſhe lay on one Side in the River, her Teeth clenched, the Water flowing a little over her Face, and ſome Part of her Coats above the Water, her right Arm lying againſt a Stake: That ſhe was laced, and not at all ſwelled, and ſhe ſaw a purging Froth iſſue out of her Noſe and one of her Eyes.

Thomas Dew depoſed, That ſhe lay on her Side in the Water, her right Arm within the Stakes, and her left Arm without; that her Shoes and Stockings were clean, without any Mud or Dirt on them; and he did not think the Corps had ever ſunk to the Bottom; and, when ſhe was taken out, no Water came from her, only ſome Froth out of her Noſe; and ſhe was not at all ſwelled.

Edward Blackno confirmed the Teſtimony of the former Witneſſes, as to the Poſture of the Corps in the Water: As did alſo *William Edmunds* and *William Page*.

Anne Ulfe alſo confirmed the Teſtimony of the former Witneſſes, and ſaid, One of her Arms was about a Stake, and the other down in the Water: That her Shoes and Stockings were clean: Her Stockings were rolled down, and ſhe had no Garters on.

William How gave the like Evidence, obſerving, That one of her Arms and her Head were in the Grate (or Stakes.)

John Meager alſo teſtified, That the Corps floated in the Water, her Right Arm in the Grate, and her Left Arm with the Stream; but that it was not borne up by any Thing but the Water.

The Evidence of the Surgeons.

Then Mr. *John Dimſdale*, jun. the Surgeon, was ſworn: WhereuponMr. *Cowper* ſaid, There were ſome eminent *London* Phyſicians attending, and deſired they might be called into Court, and hear the Surgeons Evidence: And the Court agreeing to it, Dr. *Sloane*, Dr. *Garth*, Dr. *Morley*, Dr. *Gilſtrop*, Dr. *Harriot*, Dr. *Wollaſton*, Dr. *Crull*, Mr. *William Cooper*, the great Anatomiſt, Mr. *Bartlet*, and Mr. *Camlin*, were brought in.

Mr.

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Mr. *Dimſdale* then gave his Evidence, teſtifying, That he went at the Requeſt of old Mrs. *Stout*, to view the Corps, together with Mr. *Camlin*, the ſame Day it was found; and he obſerved a little Swelling on the Side of the Neck, and ſhe was black on both Sides, particularly the Left Side, and between her Breaſts up towards the Collar-Bone.

It being demanded how her Ears, were, he ſaid, There was a Blackneſs on both Ears, and a Settling of Blood.

Mr. *Cowper* then asked him, If he did not ſay that the Settling of Blood was no more than a common Stagnation before the Coroner's Inqueſt? He anſwered, He did not remember a Word of that; but he confeſſed there was no Mark or Circle about her Neck.

Sarah Kimpſon teſtified, That ſhe helped to ſtrip the Corps, and there was a Settlement of Blood behind the Ear, bigger than her Hand would cover, and another Settlement of Blood under her Collar-Bone; but ſhe ſaw no Mark about the Neck: That the Body was flat and lank; no Water in it, as ſhe could perceive: That ſhe (the Witneſs) had a Child drowned, not long before, in the ſame Place; and they found her ſunk to the Bottom of the River the next Morning, ſwelled to a great Degree, being very full of Water, as appeared when the Child was opened. And Mr. *Cowper* demanding of Mrs. *Kimpſon*, If there was no Settlement of Blood about the Child? ſhe anſwered, She ſaw none.

Mrs. *Peppercorn*, the Midwife, teſtified, That ſhe was preſent at the ſtripping the Body, and, at old Mrs. *Stout*'s Requeſt, examined it, and found the Deceaſed was not with Child. That ſhe had a black Place on the Side of her Head, and another about her Ear: That no Water came from her, but a Froth purged from her Mouth and Noſtrils, as was uſual.

Elizabeth Huſler alſo depoſed, She helped to ſtrip the Deceaſed, found the Body lank and thin, and no Appearance of Water in it: That there was a ſettling of Blood at the Top of the Collar Bone, and a ſettling of Blood under each Ear; but moſt under her left Ear.

Anne Pilkington gave much the ſame Evidence; and Mr. *Cowper* asking her if ſhe did not make Oath, That the Deceaſed had a Circle round her Neck? ſhe anſwered, She never did, nor durſt not do it: Whereupon Mr. *Jones*, looking upon her Examination, ſaid, It was *croſs her Neck* there.

Mr. *Coatſworth* the Surgeon depoſed, That the Body, having been buried ſix Weeks, was taken up by her Friends; and he went to *Hertford*, at the Requeſt of old Mrs. *Stout*, to ſee it opened: That her Face and Neck, to her Shoulders, appeared black, and ſo much corrupted, that they were unwilling to proceed; but the Mother inſiſting to have it done, they opened her, and found the Stomach and Guts as full of Wind, as if they had been blown with a Pair of Bellows: That, putting the Guts aſide, they came to the *Uterus*, which they viewed very nicely, and ſaw it perfectly empty: That, upon opening the Stomach, they let out a great deal of Wind, but no Water; neither was there any in the Lobes of the Lungs, or Diaphragm; but all was dry: Whereupon he (the Witneſs) obſerved, That this Woman could not be drowned; for, if ſhe had taken in any Water, it would have rotted all the Guts: As for any Marks about her Head and Neck, it was impoſſible to diſcover them, they were ſo rotten; but all the reſt was ſound to a Miracle: He did not imagine they ſhould have found them ſo.

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Mr. *Cowper* here objected againſt this Kind of Evidence: For that the Body had been taken up again by the Relations, without any legal Authority, after the Coroner's Inqueſt had ſat upon it: Thus they might have broken the Skull in a hundred Pieces, after the Coroner had viewed it, and then have proſecuted him for it. He apprehended they ought to have had a Writ of *Melius inquirendum*, to authorize them to make another Inſpection, and to have given him Notice, that he might have had Surgeons there to ſuperintend their Proceedings.

The Judge anſwered, If they had done an ill Thing in taking up the Body without Orders (though he did not know there was any more Hurt in taking up that Body than another), that could be no Reaſon why they ſhould not hear that Evidence.

Mr. *Coatſworth* alſo obſerved, That Mr. *Camlin*, Sir *William Cooper*'s Surgeon, was preſent when they inſpected the Body.

Then *John Dimſdale* the Elder teſtified, That being ſent for by Mrs. *Stout* to view the Body of her Daughter, on the 28th of *April*, they found the Head and Neck ſo mortified, that they were in Doubt whether they ſhould proceed; but Mrs. *Stout* inſiſting her Daughter ſhould be opened, to clear her of the Scandal of being with Child, they opened the Body, and found it as ſound as any Fleſh could be; no manner of Putrefaction in her Lungs, or any other Part, but very full of Wind: That they ſearched the Stomach and Thorax, but found not one Drop of Water about them; nor was the Coffin or Shroud in the leaſt wet or ſoiled: And, examining the *Uterus*, they ſaw no Sign of Conception. Then they conſulted together, whether ſhe was drowned or not; and were all of Opinion, She was not drowned: Only Mr. *Camlin* deſired to be excuſed from giving his Opinion. It being demanded of the elder *Dimſdale*, Why he believed ſhe was not drowned? he anſwered, Becauſe they found no Water in her; and if there had been any, that would have cauſed a Fermentation, and rotted the Lungs and Guts; whereas her Inteſtines were not putrified, as they would have been in a Week's Time, if there had been but a Pint of Water there.

Then *John Dimſdale* the younger, and his Brother, *Robert Dimſdale* the Phyſician, were ſworn, and teſtified, They viewed the Corps after it was opened, and did not find a Drop of Water in the Thorax, or Abdomen. Mr. *Cowper* demanding of Mr. *Robert Dimſdale*, If it was poſſible there ſhould be Water in the Thorax? he anſwered, They ſhould have expected Water, or a Putrefaction; but they found no Putrefaction either in the Bowels or Inteſtines, but only in her Head and Shoulders, and one Arm.

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Mr. *Cowper* demanding how any Water ſhould paſs into the Thorax? Dr. *Dimſdale* anſwered, By the Lymphæduct, if any Way: And being asked, If any Water could paſs into a Body after Death? he anſwered, No.

John Dimſdale the younger added, That he opened the Child, above-mentioned to be drowned; and that it was extremely ſwelled in the Belly and Stomach, and had abundance of Water in it. His Brother, the Phyſician, alſo obſerved, That on opening the Abdomen of the Child that was drowned, they found abundance of Water in the ſeveral Cavities.

Mr. *Cowper* demanding, If he was not angry Mr. *Camlin* would not join with them in their Opinion? he anſwered, No: But being asked again, If he did not tell *Camlin* he was a Graduate Phyſician? he ſaid, They had ſome Words about it.

Dr. *Coatſworth* being ſworn, it was demanded of him, What was his Opinion of Bodies found floating without any Water in them?

He anſwered, Every one that was drowned was ſuffocated, by Water paſſing down the Wind-pipe into the Lungs upon Reſpiration; and, at the ſame Time, the Water preſſing upon the Gullet, there would be a Neceſſity of ſwallowing great Part of it into the Stomach, He had been in Danger of Drowning himſelf, and was forced to ſwallow a great Quantity of Water. If a Perſon was drowned, and taken out immediately, as ſoon as the Suffocation was effected, he ſhould not wonder if there was but little Water in the Stomach and Guts; but if it lay in the Water ſeveral Hours, it muſt be ſtrange if the Belly ſhould not be full of Water: But he would not ſay it was impoſſible to be otherwiſe.

Mr. *Cowper* demanding, Whether he attempted to drown himſelf, or was in Danger of drowning by Accident? he anſwered, By Accident: Whereupon Mr. *Cowper* obſerved, There was a Difference where a Perſon drowned himſelf on Purpoſe, and was drowned by Accident; for when he was drowned by Accident, he ſtruggled a great while, and took in much Water before he died; but when a Perſon threw herſelf into the Water on Purpoſe to be drowned, ſhe died immediately, receiving but little Water before ſhe expired.

Dr. *Naylor* being ſworn, declared he was of Opinion, That a drowned Body would have a Quantity of Water in it; and, if there was no Water in the Body, he ſhould believe the Perſon was dead before he was put into the Water.

Then Mr. *Cowper* demanded, If the Dr. did not conſtantly vote againſt the Intereſt of his Family in that Corporation? and ſaid, He ſhould have asked the *Dimſdales* the ſame Queſtion: But the Court told him, That was not material.

Mr. *Babington*, a Surgeon, alſo declared upon his Oath, he was of Opinion, That all Bodies that went into the Water alive, and were drowned, had Water in them, and ſunk as ſoon as drowned; nor did they riſe ſo ſoon as this Woman did: And this, he found, was the Opinion of Phyſicians.

Whereupon the Judge, Mr. Baron *Hatſel*, ſaid, He had heard ſo too; and that was the Reaſon they tied Bullets to dead Bodies to ſink them at Sea. Mr. *Cowper* anſwered, the Reaſon of that was, That the Bodies ſhould not riſe again, for they would ſink without.

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Mr. *Babington* proceeded, and ſaid, He had once a Patient that was half an Hour under Water, and lived ſeveral Hours afterwards; and, during that Time, diſcharged great Quantities of Water: And though he fell into the Water by Accident, he did not believe that made any Difference.

Dr. *Burnet* alſo declared upon Oath, he was of Opinion, Whether one fell into the Water by Accident, or threw himſelf in, the Body would receive Water as long as it was alive; and there were Endeavours for Reſpiration; and, after thoſe Endeavours were over, no Water would come in, for all the Parts were cloſed; and, conſequently, there muſt have been Water found within this Woman, if ſhe was drowned; and he believed drowned Bodies always ſunk.

Dr. *Woodhouſe* was of Opinion, That every Body, ſuffocated with Water, muſt have a great deal of Water in the Stomach, and ſome in the Lungs. And Mr. *Cowper* demanding which Way it ſhould paſs into the Thorax? The Dr. anſwered, The Thorax was the Veſſel where the Lungs lay, in the Cavity of the Breaſt: The Wind-pipe was the Conveyance to the Lungs: That, while a Perſon was ſtruggling for Reſpiration, there might be a Relaxation of the Parts, and a Perſon muſt ſuck in ſome Water as well as Air; conſequently ſome Water would get into the Wind-pipe, and ſo enter the Lungs; but the greater Quantity, no doubt, would be in the Stomach.

The Court demanding, What was his Opinion as to the Putrifying of the inward Parts? the Dr. anſwered, No doubt, where Water gets into the Stomach, or, wherever it was, it would putrify ſoon.

Edward Clement, a Seaman, being called as a Witneſs for the King, declared, That in the Sea-fight at *Beachy-head*, in the Year 90, he ſaw ſeveral thrown over-board, and their Bodies floated; and it was a Rule with them, That when Bodies came dead into the Sea they always floated; and therefore, when any one died a Natural Death, and was buried at Sea, they tied Weights to the Corps to ſink it: But he had ſeen ſeveral Men drowned who ſunk downright, as ſoon as the Breath was out of their Bodies. It being demanded of him, How he obſerved the dead Bodies floated after the Battel? he anſwered, They floated with their Heads juſt down, and the ſmall of their Backs and Buttocks upwards. That he ſaw hundreds floating ſo in *Beachy-head* Fight.

That he ſaw the *Coronation* ſhipwrecked in *Sept.* 1691, when he belonged to the Ship *Dutcheſs:* That they looked out, and ſaw them taking down their Maſts, and ſaw them walking up and down, on the Right Side of the Ship, while ſhe ſunk down; after which, they ſwam up and down like Shoals of Fiſh one after another: He ſaw them hover upon one another, and drop away by Scores at a Time; and there were not above Nineteen that ſaved themſelves by Boats or Swimming out of the whole

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whole Ship's Crew, which conſiſted of five or ſix hundred Men. The reſt ſunk downright, twenty at a Time.

Richard Gin, another Seaman, depoſed, That, when they buried any one at Sea, they tied Weights to the Body, believing that otherwiſe the dead Body would ſwim.

Some Obſervations on this Evidence.

Then Mr. *Jones*, the King's Counſel, ſaid He hoped they had given the Jury Satiſfaction, That the Deceaſed did not drown herſelf, but was carried in the Water after ſhe was killed: For, if it was true that all dead Bodies, thrown into the Water, ſwam; and Bodies, that fell into the Water alive, and were drowned, ſunk, that was ſufficient Evidence ſhe was not drowned, but came by her Death ſome other Way, They had ſhewn, That Mr. *Cowper* was the laſt Man in her Company; and, what became of her afterwards, no body could tell: And they ſhould now proceed to give Evidence, That, notwithſtanding all the Civilities and Kindneſs that paſſed between this Family and him, when the Noiſe of the Fact was ſpread abroad, Mr. *Cowper* did not come to conſult with old Mrs. *Stout*, what was proper to be done; but rode out of Town next Day, without taking any Notice of the Accident.

Mr. Cowper's Behaviour, after this Accident.

John Archer depoſed, That he ſaw Mr. *Cowper* take Horſe at the *Glove* on *Wedneſday* Morning after the Aſſizes, and ride out the back Way; which Mr. *Cowper* obſerved, was the uſual Way he went the Circuit into *Eſſex*.

George Aldridge, the Hoſtler of the *Glove*, alſo teſtified, That he ſaw Mr. *Cowper* take Horſe on the *Wedneſday*, and go the Way that led to *Chelmsford*.-----He depoſed alſo, That Mr. *Cowper* ſent him for his Horſe to Mrs. *Stout*'s, on the *Tueſday* Night, telling him he ſhould have Occaſion for the Horſe to go out with the Judge next Morning; and he went three Times before they would deliver the Horſe.

Mr. *Cowper* thereupon ſaid, He ſent for his Horſe, becauſe he heard ſhe had drowned her ſelf; and he thought it was prudent to do ſo, for fear the Lord of the Manor ſhould ſeize every Thing that was there, as forefeited.

Mr. *Jones* obſerved, he did not think fit to take his Horſe himſelf, though he put him up there: And now they ſhould proceed to give Evidence againſt the other three Priſoners.

Evidences againſt Marſon, Stevens, and Rogers.

John Gurrey teſtified, That, at the laſt Aſſizes, Mr. *Stevens*, and Mr. *Rogers* came and hired a Lodging of his Wife in the Afternoon, when he was at Church: That they came to his Houſe again about Eleven at Night, and brought Mr. *Marſon* with them: They all went up Stairs, had a Fire lighted, and asked for the Landlord, whereupon he (*Gurrey*) came up to them, and fetched them Wine, and at their Deſire ſat down and drank with them: Then they asked, If Mrs. *Sarah Stout* lived in Town, and if ſhe was a Fortune? And he promiſed to ſhew them Mrs. *Stout* the next Day: And Mr. *Rogers* and *Stevens* telling *Marſon* he was her old Sweet-heart, *Marſon* anſwered, She had thrown him off, but a Friend of his was even with her by that time: ----That Mr. *Marſon* putting by his Wig, he ſaw his Head was wet; and *Marſon* ſaid, he was juſt come from *London*, and that made him in ſuch a Heat: That the next Morning he (the Witneſs) hearing of the Accident, went down to Mrs. *Stout*'s, and ſaw them laying her out in the Barn, and meeting Mr. *Marſon* and Mr. *Stevens*, and Mr. *Rogers* as he came back, he told them the News, and they deſired him to go with them to the Barn again, which he did; and while he was viewing of the Corps they went away: And about Eleven the ſame Morning he ſaw Mr. *Marſon* and Mr. *Stevens* with Mr. *Cowper* in the Market-Place.

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Here Mr. *Cowper* demanded of *Gurrey*, If he did not ſay to his Wife, they muſt not meddle with *Sarah Walker*, the Maid of the Deceaſed; becauſe ſhe was a Witneſs againſt the *Cowpers? Gurrey* thereupon acknowledged that, upon his Wife's ſaying ſhe ſuſpected *Sarah Walker*, he bid her not concern herſelf with her, for Fear of taking off her Evidence.

Martha Gurrey the Wife of the ſaid *John Gurrey* teſtified, That *Stevens* and *Rogers* came to her Houſe about Five in the Afternoon, on the Day the laſt Aſſizes began, and hired a Lodging of her; after which they went away, and returned between Eleven and Twelve at Night, and brought Mr. *Marſon* with them, and deſired they might all three lie together: That ſhe made them a Fire, and her Husband fetched them Wine, and one of them asked him if he knew Mrs. *Sarah Stout*, telling *Marſon* ſhe was an old Sweet-heart of his, and *Marſon* anſwered, She had turned him off, but a Friend of his was even with her; and Mr. *Rogers* ſaid he was in with her; and afterwards ſaid her Buſineſs was done; and laying down a little Bundle they had, he added, Mrs. *Sarah Stout*'s courting Days are over: Whereupon ſhe (the Witneſs) replied, ſhe hoped it was no Hurt to the Gentlewoman, and looking on Mr. *Marſon*, ſhe ſaw him put his Peruke aſide, and his Head reeked, and he told them he was juſt come from *London*, which made him diſappointed of a Lodging: That going afterwards into the next Room, ſhe heard them diſcourſing about Money, and one of them ſaid, the Uſe Money was paid to Night: And next Morning after they were gone, ſhe found a Cord at the End of the Trunk, which ſhe was ſure was not there before, and produced the Cord in Court.

Mr. *Cowper* demanding, Why they did not give this Evidence to the Coroners Inqueſt? She anſwered, ſhe did tell her Husband ſhe thought they ought to be taken up, and he ſaid he would not do it, he did not know but it might coſt him his Life; and that ſhe was afterwards ſo troubled about it, that ſhe could not reſt Day or Night, and told him if he would not reveal it, ſhe would do it her ſelf.

Elizabeth Gurrey, the Siſter of the former Witneſſes depoſed, That ſhe heard Mr. *Marſon* ask the other Gentlemen how much Money they had ſpent? And they anſwered, what was that to him? He had had 40 or 50 *l.* to his Share; and the other demanding if the Buſineſs was done, he anſwered, he believed it was; but if it was not done, it would be done

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done that Night: Then he pulled a Handful of Money out of his Pocket, and ſwore he would ſpend it all for Joy the Buſineſs was done: That Mr. *Cowper*'s Name was mentioned in their Diſcourſe; but not Mrs. *Stout*'s: One of them was very hot; he wiped his Head with a Handkerchief, and his Shoes were wet and dirty; ſhe thought it was Mr. *Marſon*.

Upon this Evidence Mr. *Jones* obſerved, That Mr. *Marſon* pretended he was juſt come from *London*; but when he was examined, he ſaid he came to *Hertford* about Eight o'Clock, and went to the *Glove and Dolphin* Inn, where he ſtaid till he came to his Lodgings; but it was ſtrange he ſhould be in ſuch a great Heat and wetſhod, if he came from the Tavern, where he had been ſitting four or five Hours, by his own Relation; and thereupon his Examination was read.

And here the Evidence for the King being cloſed, and Mr. *Cowper* directed to enter upon his Defence, he ſaid,

Mr. Cowper's *Defence.*

Now they have done on the Part of the King, my Lord, and you Gentlemen of my Jury, I muſt beg your Patience for my Defence: I confeſs it was an unfortunate Accident for me (as Mr. *Jones* calls it) that I happened to be the laſt Perſon (for ought appears) in the Company of a Melancholy Woman. The Diſcourſe, occaſioned by this Accident, had been a ſufficient Misfortune to me without any Thing elſe to aggravate it; but I did not in the leaſt imagine that ſo little, ſo trival an Evidence as here is, could poſſibly have affected me to ſo great a Degree, as to bring me to this Place, to anſwer for the worſt Fact, that the worſt of Men can be guilty of.

My Lord, your Lordſhip did juſt now obſerve, That I have appeared at the Bar for my Clients; but I muſt ſay too, that I never appeared for my ſelf under this or the like Circumſtances, as a Criminal for any Offence whatſoever.

Mr. *Jones* very well ſaid, when he ſpoke on the Part of the King, that if this Gentlewoman was murthered, the Crime was villainous, baſe, barbarous, and cruel; and for my Part I think ſo too: The Crime would be ſo great, that it could never be ſufficiently condemned: But at the ſame Time I may aver, that to ſuppoſe a Murther without good Grounds for it, and afterwards to charge innocent Men with it knowingly and Maliciouſly, is to a Trifle as baſe and barbarous as the the Murther it ſelf could be.

My Lord, I ſpeak for my own Part, I know not at what Price other Men may value their Lives; but I had much rather my ſelf was murthered than my Reputation; which yet, I am ſenſible, hath ſuffered greatly hitherto, by the Malice and Artifice of ſome Men, who have gone pretty far in making this Fact, as barbarous as it is, to be credited of me: And therefore I muſt beg your Lordſhips and the Jury's Patience, while I not only defend my Life, but juſtify my ſelf alſo from theſe Things that have unjuſtly aſperſed me, by the Conſpiracy, and Artifice of my Accuſers.

My Lord in all the Evidence that hath been given, I muſt obſerve, there is no poſitive Evidence (with Submiſſion) to induce the Jury, or any one, to believe the General, that this Gentlewoman was murthered; but they go upon Suppoſitions and Inferences, which are contradicted by other Circumſtances, in the very Evidence of the Proſecutor, that make full as ſtrong to prove ſhe was not murthered, as that ſhe was; ſo that, as it ſtands, it can amount only to a bare Suppoſition that ſhe was murthered by any Body.

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Then, as to the Evidence that particularly relates to my ſelf or the Gentlemen, who ſtand with me at the Bar, that they, or I were concerned in it, (if ſhe was murthered) there is not one Syllable of Proof; at moſt, it amounts but to make us ſuſpected of a Murther, not proved, but only ſuſpected: This I obſerve upon the Evidence as it now ſtands without Anſwer, as it has been given on the King's Part; and how far, in the Caſe of Life, Men ſhall be affected with Evidence of this Nature, which neither proves the Murther in general, nor that they did it in particular, though no Defence was made, or any further Anſwer given, I muſt ſubmit to your Lordſhips and the Jury's Judgment.

But, my Lord, I do not doubt but I ſhall be able to wipe away, even that remote Suſpicion, by my Defence: They have been long in their Evidence for the King; and therefore I muſt beg your Patience while I give a particular Anſwer to every Part of it, in as good a Method as I am able: And I will waſte as little Time as may conſiſt with the juſtifying of my Reputation; for which I know your Lordſhip will have as tender a Regard, to ſee it doth not ſuffer unjuſtly, as for my Life it ſelf.

And I promiſe your Lordſhip, I ſhall trouble you with no Evidence which is not expreſs and plain, no Inuendo's or Suſpicions; but I ſhall prove fully and clearly, in the firſt Place, that there was no Ground at all in this Caſe, to ſuppoſe ſhe was murthered by any one but her ſelf.

The firſt Fact that they inſiſted upon, to infer a Murther from it, was That the Body was found floating: Now, my Lord, that Fact I am able by the Evidence I have, as well as from that of the Proſecutor, to deny: For the Fact was directly otherwiſe, that is, ſhe was not found floating.

And whereas the Proſecutor's Witneſſes, who have been produced to this Point, are obſcure and poor Men, and your Lordſhip obſerves, have been taught to ſay generally that ſhe floated, which, when they are required to explain, and deſcribe how ſhe lay, they contradict themſelves in, by ſhewing ſhe lay Sideways between the Stakes, and almoſt all under Water: Now I ſhall give your Lordſhip and the Jury, a full and particular Account and Deſcription from the Pariſh Officers, Men employed by the Coroner to take the Body out of the Water, of the very Manner and Poſture in which it was firſt found; which they are much better able to do than the Proſecutor's Witneſſes, having ſeen her before all or moſt of thoſe People; and theſe Officers clearly agree, that her Body was under Water, when found, except ſome ſmall Appearance of her Petticoats, near or on the Surface

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face of the Water, which may be very eaſily accounted for; becauſe the Stakes the Witneſſes mention, and which are driven into the Ground croſs the River to prevent Weeds and Trumpery from running into the Mill-ſtand, as the Witneſſes have already ſaid, about a Foot diſtance from one another, and are ſet with their Feet from the Mill, and their Heads inclining towards the Mill with the Stream. Now, my Lord, every Body knows, that though a drowned Body will at firſt ſink, yet it is buoyant, and does not go down-right, and reſt in one Place like Lead; for a human Body is ſeldom or never in a Stream found to lie where it was drowned: A Body, drowned at *Chelſea*, has been often found by Fiſhermen at *London*, and that before it came to float above Water. Now if a Body is ſo buoyant, as that it is driven down by the impellant Force of the Current (though it do not float above Water) it ſeems a Conſequence, that when it comes to be ſtopped and reſiſted by the Stakes which lie with their Heads downwards, inclining with the Stream, the Stream bearing the Body againſt the Stakes, muſt needs raiſe it upwards, to find another Paſſage, if poſſible, when the ordinary and natural is obſtructed. I have ſeen, I remember, that where Weeds have been driven down a River, and have been rolled along at the Bottom, when they have come down to a Board or Stakes of a Wyer or Turnpike, they have been by the Force of the Water raiſed up againſt thoſe Boards or Stakes, and forced over them; though without ſuch Obſtruction they had undoubtedly continued to roll under the Water. I do not know of any one Symptom they pretend to, of her not being drowned, from any Thing obſerved of her in the Water: Then as to the Flatneſs of her Belly, when ſhe was laid in her Coffin, I ſhall ſhew it is a common and natural Accident; ſometimes drowned Bodies are ſwelled more, ſometimes leſs, ſometimes not at all: I think it hardly deſerves a Phyſician to prove, that a Body may be drowned with very little Water; that a Man may be drowned by ſtrangling, or Suffocation cauſed by a little Water in the Lungs, without any great Quantity of Water received in the Body, is a certain and eſtabliſhed Truth; for I am told, that when Reſpiration ceaſes, the Party dies, and can receive no Water after that; ſo that nothing is to be inferred from a Body's having more or leſs Water found in it, eſpecially if your Lordſhip will give me Leave to obſerve this Diſtinction, where a Body is voluntarily drowned, and where it is drowned by Accident; for People that fall in by Accident do ſtruggle and ſtrive as long as they can: every Time they riſe, they drink ſome Water into the Stomach to prevent its paſſing into the Lungs, and are drowned no ſooner then needs muſt; but Perſons that voluntarily drown themſelves, to be ſure deſperately plunge into the Water, to diſpatch a miſerable Life as ſoon as they can; and ſo that little Quantity in the Lungs, which cauſes Death, may be the ſooner taken in, after which no more is received: And I hope, by Phyſicians it will appear, there is good Ground for this Difference.

The next is the Evidence that the Chirurgeons have given on the other Part, relating to the taking this Gentlewoman out of her Grave, after ſhe had been buried ſix Weeks; whether this ought to have been given in Evidence, for the Reaſons I hinted at, in a Criminal Caſe, I ſubmit to your Lordſhip: But as it is, I have no Reaſon to apprehend it, being able to make appear, that the Gentlemen who ſpoke to this Point, have delivered themſelves in that Manner, either out of extreme Malice, or a moſt profound Ignorance: This will be ſo very plain upon my Evidence, that I muſt take the Liberty to impute one, or both of thoſe Cauſes, to the Gentlemen that have argued from their Obſervations upon that Matter.

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And now, if your Lordſhip will but pleaſe to conſider the Circumſtances under which they would accuſe me of this horrid Action, I don't think they will pretend to ſay, that in the whole Courſe of my Life, I have been guilty of any mean or indirect Action; and I will put it upon the worſt Enemy I have in the World to ſay it. Now, for a Man in the Condition I was in, of ſome Fortune in Poſſeſſion, related to a better, in a good Employment, thriving in my Profeſſion, living within my Income, never in Debt, (I may truly ſay not five Pounds, at any one Time, theſe Eight Years paſt) having no Poſſibility of making any Advantage by her Death, void of all Malice; and, as appears by her own Evidence, in perfect Amity and Friendſhip with this Gentlewoman, to be guilty of the murthering her, to begin at the Top of all Baſeneſs and Wickedneſs, certainly is incredible.

My Lord, in this Proſecution, my Enemies ſeeing the Neceſſity of aſſigning ſome Cauſe, have been ſo malicious to ſuggeſt before, (though not now, when I have this Opportunity of vindicating my ſelf publickly) that I have been concerned in the Receipt of Money for this Gentlewoman, had her Securities by me, and ſometimes that I had been her Guardian, or her Truſtee, and I know not what. I now ſee the Contrivers and Promoters of that Scandal, and they know it to be baſe, falſe, and malicious: I never was concerned in Intereſt with her directly or indirectly; and ſo I told them when I was before my Lord Chief Juſtice: 'Tis true, it was then juſt ſuggeſted by the Proſecutors, I then denied it, and I deny it ſtill-----I thank God I have not been uſed, nor have I needed, to deny the Truth.

My Lord, you find the Proſecutors have nothing to ſay to me upon this Head, after all the Slanders and Stories they have publiſhed againſt me of my having Money in my Hands which belonged to the Deceaſed: But though they do not ſtir it, I will, and give your Lordſhip a full Account of all that ever was in that Matter. When I lodged at *Hertford*, ſome Time ſince ſhe deſired me to recommend to her a Security for 200 *l.* if it came in my Way: My Lord, when I came to Town, I underſtood that one Mrs. *Puller*, a Client of mine, had a Mortgage formerly made to her by one Mr. *Loftus* of *Lambeth* in *Surry*, for the like Sum; and that ſhe was willing to have in her Money: I wrote to this Gentlewoman,

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the Deceaſed, to acquaint her of the Security; ſhe thereupon did ſend up 200 *l.* and ſome odd Pounds for Intereſt (the Account of which I produced to my Lord Chief Juſtice): This Money was ſent to me by Mr. *Cramfield*, as I have been informed, and by him given to Mr. *Toller*'s Clerk, and by him brought publickly to me.

My Lord, this Mortgage I immediately transferred by Aſſignment indorſed on the Back of it, and Mrs. *Habberfield*, a Truſtee for Mrs. *Puller*, ſigned and ſealed it; and that very 200 *l.* and Intereſt due was at one and the ſame Time paid to Mrs. *Puller*, and by her the Principal was paid to her Daughter, in Part of her Portion: All this was tranſacted the beginning of *December* laſt, and ſhe was not drowned till the 13th of *March* following: And, my Lord, theſe People, that are now the Proſecutors, did own before my Lord Chief Juſtice, that they had found this Mortgage amongſt the Deceaſed's Writings in her Cabinet at the Time of her Death. Now, my Lord, I ſay, that, ſaving this one Service I did her, as I ſaid, in *December* laſt, I never was otherwiſe concerned with her in the receiving or diſpoſing of any of her Money; nor had I ever any of her Securities for Money in my keeping; and I defy any Adverſary I have to ſhew the contrary.

My Lord, as there appears no Malice, no Intereſt, ſo they have proved for me, that there was no Concealment of Shame to induce me to commit ſo barbarous an Action; otherwiſe perhaps, now they find they can aſſign no other Cauſe, they would content themſelves to give that Reaſon, and fling that Scandal at me: And though I take it, by the Experience I have had of them, they did not deſign to do me any Favour, yet, I thank them, in endeavouring to vindicate her Honour, they have ſecured my Reputation againſt that Calumny; and though I am ſatisfied, as I ſaid, they did not intend me Kindneſs, yet I thank God, they have given me a juſt Opportunity to take Advantage of their Cunning, for the clearing my Innocence in that Particular.

Then, my Lord, not to reſt it here, but to ſatisfy the Jury and the World, how this Gentlewoman came to deſtroy herſelf, I ſhall give the cleareſt Evidence that was ever given in any Court, that ſhe murthered her ſelf. When I enter upon this Proof, I muſt of Neceſſity treſpaſs upon the Character of this Gentlewoman that is dead. I confeſs this is a tender Point, 'tis a Thing I would willingly be excuſed from, and it is not without a great deal of Reluctancy and Compulſion forced from me: That ſhe was melancholy, the Proſecutors themſelves have proved, but I muſt of Neceſſity ſhew you the Occaſion and Reaſons of it, and the Witneſſes will tell your Lordſhip what deſperate Reſolutions ſhe had been under formerly, and that will lead me to near the Time of her Death, to ſhew why, and upon what Accidents, ſhe made away her ſelf. I will not enumerate Particulars, by way of opening; only I muſt tell your Lordſhip, that ſome Letters of hers muſt of Neceſſity be produced, which truly, as I ſaid, I ſhould not meddle with, if I had not theſe innocent Gentlemen here to defend, as well as my ſelf. Perhaps it may be ſaid, that in Honour I ought to conceal the Weakneſs of this Gentlewoman; but then, in Honour and Juſtice to theſe Gentlemen that are falſly accuſed with me, I cannot do it; I hope this one Reaſon will excuſe me to the World, for I have no other that could have obliged me to bring theſe Letters upon the Stage: I ſolemnly proteſt, if I ſtood here ſingly in the Caſe of my own Life, upon the Evidence given againſt me, I take it to be ſo inconſiderable, I would not do it; but I muſt do it, to ſhew that theſe Gentlemen alſo are innocent, and to preſerve them; becauſe I am ſatisfied in my own Mind they are ſo. My Lord, when I have done that, I ſhall ſhew your Lordſhip in the next Place, that it is utterly impoſſible I could be concerned in this Fact, if I had had all the Motives and Provocations in the World to have done it: I ſhall ſhew your Lordſhip, in Point of Time, it could not be.

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The Maid *Sarah Walker*, who is the ſingle Witneſs, I take it, that ſays any Thing in the leaſt relating to me, ſaid but now, the Clock had ſtruck Eleven before ſhe carried up the Coals, and about a quarter of an Hour after while ſhe was warming the Bed above Stairs, ſhe heard the Door clap, and ſometime after ſhe came down, and found that I and her Miſtreſs were gone: Now in Point of Time, I ſhall prove it utterly impoſſible I could be guilty of the Fact I am accuſed of, being ſeen to come into the *Glove* Inn as the Town Clock ſtruck Eleven, and ſtaying there more than a quarter of an Hour, was, after ſeveral Things done at my Lodging, in Bed before Twelve o' Clock, and went no more out that Night, as I ſhall prove. As for that little Circumſtance of ſending for my Horſe, which they have made uſe of all along to back this Proſecution, their very telling me of that Matter, ſhews how they are put to their Shifts to juſtify their accuſing me; I ſay in Prudence I ought to have done what I did: I ſent for him on the *Tueſday*, but as their Witneſs ſaith, I told him at the Time I bid him fetch my Horſe, not to uſe then, nor till by the Courſe of the Circuit I was to go into *Eſſex* with the Judges the next Morning; and till then the Proſecutor's Witneſs, who is the Hoſtler at the *Glove* Inn, was ordered to ſet him up there, to litter him down, and to take Care of him, and feed him; and that he ſhould be ready for me to go to *Chelmsford* on the Morrow, whither I went with the other Counſel the next Morning, being *Wedneſday*; and this, my Lord, is the Whole of that Matter.

My Lord, this Buſineſs ſlept near two Months after the Coroner's Inqueſt, before I heard of it, or imagined my ſelf to be concerned in it, and was never ſtirred, till two Parties, differing on all other Occaſions, had laid their Heads together: I beg Leave to let your Lordſhip a little into that Matter, to ſhew you how this Proſecution came to be managed with ſo much Noiſe and Violence as it hath been. I can make it appear, that one of the greateſt of the Quakers, Mr. *Mead* by Name, has very much, and indirectly too, concerned himſelf in this Matter: It ſeems

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they fancy the Reputation of their Sect is concerned in it; for they think it a wonderful Thing, nay, abſolutely impoſſible (however other People may be liable to ſuch Reſolutions) That one, who was by her Education entitled to the Light within her, ſhould run headlong into the Water, as if ſhe had been poſſeſſed with the Devil; of this they think their Sect is to be cleared, though by ſpilling the Blood of four innocent Men. The other Sort of People that concur with the Quakers in this Proſecution, I ſhall mention; now I come to obſerve what the Witneſſes are that have been produced againſt me: Some of them I have nothing to object to, but that they are extreme indigent and poor, and have been helped by the Proſecutor; thoſe that are ſo, ſay nothing as to me; others who live in this Town, and give their Opinions of the Manner of her Death, are poſſeſt with much Prejudice againſt me, upon Feuds that have riſen at the Elections of my Father and Brother in this Town; and theſe, with the Quakers have wholly dreſt up this Matter for ſeveral Ends; the Quakers to maintain the Reputation of their Sect, and the others to deſtroy, or break at leaſt, the Intereſt of my Family in this Place. But, however effectual theſe Deſigns may have been, to have made a great Noiſe in the World out of nothing; I am ſatisfied now, that I am in a Court of Juſtice, where no Perſon's Reputation, much leſs his Life will be ſacrificed to the Policy or Malice of a Party without Proof; and therefore I have taken up ſo much of your Time, to ſet the true Riſe of this Proſecution before you in a clear Light.

My Lord, as to my coming to this Town on *Monday*, it was the firſt Day of the Aſſizes, and that was the Reaſon that brought me hither: before I came out of Town, I confeſs, I had a Deſign of taking a Lodging at this Gentlewoman's Houſe, having been invited, by Letter, ſo to do: And the Reaſon why I did not, was this: My Brother, when he went the Circuit, always favoured me with the Offer of a Part of his Lodging, which, out of good Husbandry, I always accepted: The laſt Circuit was in Parliament-time, and my Brother, being in the Money-Chair, could not attend the Circuit as he uſed to do: He had very good Lodgings, I think one of the beſt in this Town, where I uſed to be with him: Theſe were always kept for him, unleſs Notice was given to the contrary. The *Friday* before I came down to the Aſſizes, I happened to be in Company with my Brother and another Gentleman, and then I ſhewed them the Letter, by which I was earneſtly invited down to lie at the Houſe of this Gentlewoman, during the Aſſizes (it is dated the 9th of *March* laſt); and, deſigning to comply with the Invitation, I thereupon deſired my Brother to write to Mr. *Barefoot*, our Landlord, and get him, if he could, to diſpoſe of the Lodgings; for, ſaid I, if he keeps them, they muſt be paid for, and then I cannot well avoid lying there: My Brother did ſay, He would write, if he could think on't: And thus, if Mr. *Barefoot* diſpoſed of the Lodgings, I own I intended to lie at the Deceaſed's Houſe; but, if not, I looked on my ſelf as obliged to lie at Mr. *Barefoot*'s. Accordingly I ſhall prove, as ſoon as ever I came to this Town, in the Morning of the firſt Day of the Aſſizes, I went directly to Mr. *Barefoot*'s (the Maid and all agree in this) and the Reaſon was, I had not ſeen my Brother after he ſaid he would write, before I went out of *London*; and therefore it was proper for me to go firſt to Mr. *Barefoot*'s, to know whether my Brother had wrote to him, and whether he had diſpoſed of the Lodging or not. As ſoon as I came to Mr. *Barefoot*'s, there was one Mr. *Taylor*, of this Town, came to me, and I, in his Hearing, asked Mr. *Barefoot*, his Wife, and Maid-ſervant, one after another, If they had received a Letter from my Brother, to unbeſpeak the Lodgings? they told me, No; that the Room was kept for us; and, I think, that they had made a Fire, and that the Sheets were airing. I was a little concerned he had not writ; but, being ſatisfied that no Letter had been received, I ſaid immediately, as I ſhall prove by ſeveral Witneſſes, If it be ſo, I muſt ſtay with you; I will take up my Lodging here: Thereupon I lighted, and ſent for my Bag from the Coffee-houſe, and lodged all my Things at *Barefoot*'s: And thus I took up my Lodging there as uſual. I had no ſooner done this, but *Sarah Walker* came to me from her Miſtreſs to invite me to Dinner, and accordingly I went and dined there; and when I went away, it may be true, that, being asked, I ſaid I would come again at Night; but that I did ſay I would lie there, I do poſitively deny; and, knowing I could not lie there, 'tis unlikely I ſhould ſay ſo. My Lord, at Night I did come again, and paid her ſome Money, which I received from Mr. *Loftus*, who is the Mortgager for Intereſt of the 200 *l.* I before mentioned (it was ſix Pounds odd Money, in Guineas and half Guineas) I writ a Receipt, but ſhe declined the ſigning of it, preſſing me to ſtay there that Night; which I refuſed, as engaged to lie at Mr. *Barefoot*'s, and took my Leave of her; and that very Money, which I paid her, was found in her Pocket, as I have heard, after ſhe was drowned.

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Now, my Lord, the Reaſon that I went to her Houſe at Night, was, firſt, as I ſaid, to pay her the Intereſt-Money; in the next Place, it was but fitting, when I owned my ſelf under a Neceſſity of diſappointing her, and lying at *Barefoot*'s, to go to excuſe my not lying there; which I had not an Opportunity at Dinner-time to do. My Lord, I open my Defence ſhortly, referring the Particulars to the Witneſſes themſelves, in calling thoſe who will fully refute the Suppoſitions and Inferences made by the Proſecutors, whom firſt, my Lord, I ſhall begin with, to ſhew there is no Evidence of any Murder at all committed: And this, I ſay again, ought to be indiſputably made manifeſt and proved, before any Man can be ſo much as ſuſpected for it.

Judge *Hatſel* bid Mr. *Cowper* not flouriſh too much, but call his Witneſſes, and then make his Obſervations.

Then *Robert Dew* appeared as a Witneſs for the Priſoner, and teſtified, That he ſaw *Sarah* *The Priſoner's Witneſſes of the finding the Corps.*

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Sarah Stout taken up; that ſhe lay in the River, covered with the Water about half a Foot, and had a ſtriped Petticoat on, but nothing could be ſeen above Water; and that when he heaved her up, he found ſeveral Sticks and Flags under her; that ſhe lay on her Right Side in the Water, her Head leaning down, and her Arm between the Stakes, which ſtood ſloping, leaning down the Stream a little. That when ſhe was taken out, he perceived a white Froth come from her Mouth and Noſe, and, as they wiped it away, more came out.

Young, the Conſtable, confirmed the Evidence of the laſt Witneſs, differing only in this, That he ſaw Part of her Coat lie on the Top of the Water, and that they found ſix Guineas, ten Shillings and three Pence half Penny in her Pockets.

Wall, one of the Coroner's Inqueſt, depoſed, That there were no Marks upon the Body when they viewed it, only a little Mark about her Ear, and ſomething near her Collar Bone; and that Mr. *John Dimſdale* told them, Theſe Marks were no more than uſual in ſuch Caſes: It was only a Stagnation of the Blood.----- Other Witneſſes teſtified, That ſhe frothed pretty much at the Mouth.

The Opinions of the Phyſicians.

Then Mr. *Cowper* proceeded to examine Dr. *Sloane*, and the reſt of the Phyſicians he had brought from *London*, as to their Opinion concerning the Body's having no Water in it.

Dr. *Sloane* ſaid, a ſmall Quantity of Water, in the Wind-pipe, would ſuffocate a Perſon; and he believed, whether a Perſon came alive or dead into the Water, ſome Quantity would get into the Wind-pipe, but none into the Stomach, after the Perſon was dead.

The Court demanding, If there had been Water in the Body, if it would not have putrified the Parts? he anſwered, it would have putrified the Stomach leſs than the Lungs: That, no doubt, there would be a Fermentation more or leſs, as the Air came more or leſs to the Body: It might be otherwiſe where the Air was wholly ſhut out, which was ſuppoſed to be the modern Way of embalming or preſerving dead Bodies without Spices, which was in a great Meaſure brought about by the Cloſeneſs of the Coffin.

Mr. *Cowper* asking, if any Water could paſs into the Thorax, or there could be any Water in the Body after ſix Weeks? he ſaid, He thought it ſcarce poſſible that any ſhould go from the Wind-pipe into the Cavity of the Thorax, without great Violence, for there was a Membrane that covered the Lungs, that would hinder the Water from paſſing through: That, if there was any Quantity of Water in the Lungs, the Spungineſs of the Part would ſuck up ſome Part of it; and, in the Stomach, it was probable there was a great Fermentation, and a great deal would riſe in Vapours or Steams, and go off that Way.

Dr. *Garth* ſaid, It was impoſſible the Body ſhould have floated unleſs it had reſted or been entangled with the Stakes, becauſe all dead Bodies fall to the Bottom: And, as all the Witneſſes agreed ſhe was found upon her Side, it was as hard to conceive how ſhe ſhould float in this Poſture, as that a Deal Board ſhould float edgeways: Therefore it was plain ſhe was entangled, or the Poſture would have been otherwiſe. As to the Quantity of Water in her, it need not be very great; but, he muſt own, the Water would force it ſelf into all Cavities where there was no Reſiſtance. He believed, when ſhe threw her ſelf in, ſhe might not ſtruggle to ſave her Life, and ſo not ſup up much Water: However, he doubted not but ſome Water fell into her Lungs, becauſe the Weight of it would force it ſelf down; but this might imperceptibly work or fall out: Nor did he think Water in the Body would promote Putrefaction; for, in ſome Places, they kept Fleſh-meat from Corruption by preſerving it in Water; and, it was well known, it would putrify leſs in Water than when expoſed to Air. And, being asked again as to the ſinking of Dead Bodies, he perſiſted in his Opinion, That all dead Bodies would ſink, unleſs prevented by ſome extraordinary Accident; as, if a ſtrangled Body be thrown into the Water, and the Lungs being filled with Air, the Cord be left about the Neck, in that Caſe it might float, becauſe of the included Air, as a Bladder does; but here was no Cord, or any Mark of it, only a common Stagnation: The Seamen were miſtaken, when they ſaid they ſwam: He had made the Experiment on other Animals, and they all ſunk. Being asked, If any Quantity of Water could paſs into the Cavity of the Thorax? he anſwered, It was impoſſible there ſhould be any, till the Lungs were quite rotten; there was no Way but by the Lungs, which were inveſted with ſo ſtrong a Membrane, that they could not force Breath through it without their Blow-pipes.

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Dr. *Morley* ſaid, There was no Neceſſity ſhe ſhould have a great Quantity of Water in her: If ſhe drew into her Lungs two Ounces of Water, it was the ſame Thing as to drowning her, as if there had been two Tons. They drowned a Dog the laſt Night, and diſſected him, and found not a Spoonful of Water in his Stomach, and about two Ounces in his Lungs; and the like Quantity in another they drowned: That they both frothed at the Mouth and Noſe: And if Bodies ſwam that had been lately killed, he thought it was by Accident: And he was of Opinion, there could be no Water in the Thorax, unleſs by an Impoſthume, or ſome Violence to Nature.

Dr. *Woollaſton* was of Opinion, It was impoſſible to diſcover if a Perſon was drowned, ſix Weeks afterwards; and that if there had been never ſo much Water in the Body, it muſt have forced its Way out before that Time: That he knew two People drowned, and taken up next Day; one was ready to burſt with Water, and the other had not the leaſt Sign of Water in him, except a watry Froth at his Mouth and Noſtrils.

Mr. *Cooper*, the Anatomiſt, depoſed, That three Ounces of Water, in the Windpipe, was enough to drown a Perſon; and admitted, that Bodies neceſſarily ſink in Water, if no Diſtention of their Parts buoy them up: That there could be no Water remain in the Body after ſix Weeks Time; and it was ridiculous to expect any in the Thorax, unleſs the Lungs had

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had ſuffered ſome Apoſthumation: And as to the reſt, he concurred with the Phyſicians produced by the Priſoner.

Mr. *Harriot*, a Sea-Surgeon, teſtified, That dead Bodies always ſunk when thrown into the Sea: And Mr. *Bartlet*, another Seaman, confirmed his Teſtimony.

Mr. *Camlin* teſtified, That he and Mr. *Dimſdale*, and others, were ſent for by Mrs. *Stout* to view her Daughter's Corps, the Day ſhe was found; and that there was a Mark under her Left Ear, another below her Collar-Bone, and a third upon her Arm; and that Mr. *Dimſdale*, by his Conſent, and the reſt of the Surgeons and Phyſicians preſent, informed the Coroner's Inqueſt, That the Mark under her Ear was a Stagnation of Blood that frequently happened to drowned People. He added, That there were greater Marks of Stagnation on the Child that was found drowned in the ſame Place a little before: That the Child's Face was black and diſcoloured: That this Child was eleven or twelve Years of Age: And, laſtly, That there were no Signs of Mrs. *Stout*'s being ſtrangled.

Then Mr. *Cowper* proceeded to call Witneſſes to ſhew that the Deceaſed was a melancholly Woman.

Mr. *Bowd*, a Tradeſman of *Hertford*, depoſed, That obſerving the Deceaſed to be melancholly, he asked her, If ſhe was in Love? and ſhe confeſſed ſhe was; but ſaid, The World ſhould not ſay ſhe changed her Religion for an Husband: And that having lately bought a Gown of this Witneſs, ſhe ſaid, She believed ſhe ſhould never live to wear it.

Evidence that the Deceaſed was melancholly.

Mr. *Firmin* alſo teſtified, That the Deceaſed was melancholly.

Mrs. *Bendy* depoſed, That ſhe acknowledged her ſelf extremely melancholly, inſomuch that her Mind was diſordered by it.

Mrs. *Low* teſtified, That the Deceaſed often complained ſhe was melancholly, and confeſſed ſhe was in Love: That ſhe ſaid, She would take her full Swing of Melancholly, when her Mother was abroad, and lay a-bed a Week. That at another Time ſhe ſaid, Her Melancholly had occaſioned an Intermitting Fever; and being adviſed to ſend for a Phyſician, ſhe ſaid, Her Diſtemper lay in her Mind, and not in her Body; ſhe would take nothing, and the ſooner it killed her, the better; and that now ſhe delighted neither in Reading or any thing elſe.

Then Mrs. *Cowper*, Wife of the Priſoner's Brother Mr. *William Cowper*, (afterwards Lord Chancellor) being called as a Witneſs, teſtified, That ſhe was frequently in the Company of the Deceaſed, both at *London* and in the Country, and ſhe was extremely melancholly; and the Witneſs ſuſpecting it was upon Mr. *Marſon*'s Account, asked, Why ſhe did not marry him, and make her ſelf eaſy? but ſhe ſaid, She could not: That ſhe appeared diſturbed alſo at the Preaching of a Quaker Waterman, who gathered a Rabble of People about him before her Mother's Door; and, preaching to them, arraigned her Conduct. That the Deceaſed once having a Fever, ſaid, She was in great Hopes it would carry her off, and neglected her ſelf with that View, often wiſhing ſhe were dead: That, at another Time, being very melancholly, the Priſoner's Wife ſaid, For God's Sake keep ſuch Thoughts out of your Head as you have had; talk no more of throwing your ſelf out of a Window. To which the Deceaſed anſwered, I may thank God that ever I ſaw your Face, otherwiſe I had done it: But I can't promiſe I ſhall not do it.

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Mrs. *Toller* alſo depoſed, the Deceaſed was melancholly, and once ſaid, She would drown herſelf out of the Way.

Mr. *Taylor* depoſed, That the *Saturday* before the Deceaſed was found, ſhe appeared melancholly, and in a diſordered Head-Dreſs; and he taking Notice of it, ſhe ſaid, It would ſerve her Time.

He alſo teſtified, That the Priſoner told *Barefoot*, in his Hearing, He would lie at his Houſe, the firſt Morning of the Aſſizes, *Barefoot* having reſerved the Lodgings for his Brother, who did not come the Circuit as he intended: That the Priſoner gave this Reaſon for his lying there, *(viz.)* That his Brother muſt pay for it, and therefore he would take it himſelf.

Here Mr. *Cowper* proceeded to open another Part of his Evidence: He ſaid, That being at *Hertford* in the Long Vacation, and Mr. *Marſhal* of *Lyon's-Inn* coming down to viſit him there, he introduced him into the Company of the Deceaſed, and he made his Addreſſes to her, and was well received as a Lover: But walking out one Evening with Mr. *Marſhal*, Mrs. *Crooke* and the Deceaſed, and Mr. *Marſhal* and Mrs. *Crooke* being a little before them, Mrs. *Stout* (the Deceaſed) ſaid to him, the Priſoner, She did not think he had been ſo dull; and, he being inquiſitive to know in what his Dullneſs conſiſted? ſhe anſwered, What! Do you imagine I intend to marry Mr. *Marſhal*? and he replying, If ſhe did not, ſhe was to blame in what ſhe had done. Mrs. *Stout* ſaid, *No, I thought it might ſerve to divert the Cenſure of the World, and favour our Acquaintance:* And that he would produce ſome Letters to confirm this, after he had called Mr. *Marſhall*.

Evidence the Deceaſed was in Love with him.

Then Mr. *Marſhall* depoſed, That he came down to *Hertford* in the Long Vacation, to viſit Mr. *Cowper*, and met with Mrs. *Sarah Stout* firſt at his Lodgings: That ſhe gave him frequent Opportunities of improving his Acquaintance; and, by the Manner of his Reception, he had no Reaſon to ſuſpect the Uſe he was deſigned for: But, upon applying himſelf to her afterwards, in a Way of Courtſhip, he received a very fair Denial; and there his Suit ended. Mr. *Cowper* had been ſo friendly to give him Notice of ſome Things, that convinced him he ought to be thankful he had no more to do with her------ That he took her at her Word, when ſhe refuſed him, having partly, by his own Obſervation, but more by Mr. *Cowper*'s Friendſhip, been pretty well able to gueſs at her Meaning.

Then two Letters from the Deceaſed, to Mr. *Marſhal*, (the firſt dated the 26th of *December* 1697, the other without Date) were read, which ſhewed there was a friendly Correſpondence carried on between them, but nothing more.

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After which, Mr. *Cowper* produced a Letter from the Deceaſed to himſelf, but directed to Mrs. *Jane Ellen* at *Hargrave*'s Coffee-Houſe, to prevent Suſpicion. Which Letter was in the following Words:

Letters of the Deceaſed to Mr. Cowper.

SIR, *March the 5th.*

" I Am glad you have not quite forgot that " there is ſuch a Perſon as I in Being; but " I am willing to ſhut my Eyes, and not " ſee any thing that looks like Unkindneſs in " you, and rather content my ſelf with what " Excuſes you are pleaſed to make, than be in- " quiſitive into what I muſt not know. I " ſhould very readily comply with your Pro- " poſition of changing the Seaſon, if it were in " my Power to do it; but, you know, that " lies altogether in your own Breaſt. I am " ſure the Winter has been too unpleaſant for " me to deſire the Continuance of it: And I " wiſh you were to endure the Sharpneſs of it, " but for one Hour, as I have done for many " long Nights and Days, and then, I believe, " it would move that rocky Heart of yours, " that can be ſo thoughtleſs of me as you " are; but if it were deſigned for that End, " to make the Summer the more delightful, I " wiſh it may have the Effect ſo far, as to " continue it to be ſo too, that the Weather " may never over-caſt again; the which, if I " could be aſſured of, it would recompence " me for all that I ever ſuffered, and make " me as eaſie a Creature as I was the firſt Mo- " ment I received Breath; when you come to " *H*----pray let your Steed guide you, and " don't do as you did the laſt Time; and " be ſure order your Affairs to be here as " ſoon as you can, which cannot be ſooner, " than you will be heartily welcome to your

very ſincere Friend.

For Mrs. Jane Ellen, *at Mr.* Hargrave's *near* Temple-Bar, London.

Then another Letter from the Deceaſed to the Priſoner, dated the 9th of *March*, was read, and is as follows:

SIR,

" I Wrote to you by *Sunday*'s Poſt, which I " hope you have received, however, as a " Confirmation, I will aſſure you, I know " of no Inconvenience that can attend your " cohabiting with me, unleſs the Grand Jury " ſhould thereupon find a Bill againſt us; but " I won't fly for it, for come Life, come " Death, I am reſolved never to deſert you; " therefore, according to your Appointment, " I will expect you, and then I ſhall only tell " you that I am Your, *&c.*

Further, Evidence, ſhe was in Love with Cowper.

Then Mr. *William Cowper*, the Priſoner's Brother, was called to give Evidence for him: He ſaid, he would bear his Brother Witneſs, that it was with great Unwillingneſs he produced thoſe Letters; nothing but the Lives of thoſe Gentlemen who were tried with him, could have inclined him to that.

He depoſed further, That Mrs. *Stout* being in *London*, ſent his Brother Word ſhe would give him a Viſit at his Chamber: To prevent which, it was contrived between him and his Brother, that he (the Witneſs) being to dine with Mrs. *Stout* at his Father *Cowper*'s in *Hatton-Garden* that Day, ſhould take an Opportunity to ſay that he (the Priſoner) was gone to *Deptford*; and that the Witneſs did mention it accordingly: Whereupon Mrs. *Stout* the Deceaſed, roſe up from Dinner in Confuſion, and going into the Yard, there ſwooned away, and they gave her ſuch Aſſiſtance as was uſual in ſuch Caſes.

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He alſo teſtified, That his Brother communicated the laſt Letter to him on *Friday* before the laſt Aſſizes, and thinking, as the Caſe ſtood, it was better his Brother ſhould lie at his Lodgings at Mr. *Barefoot*'s at the Aſſizes, than at Mrs. *Stout*'s, he did not write to Mr. *Barefoot* to diſpoſe of the Lodgings to another.

Then Mrs. *Barefoot* teſtified, The Priſoner lay at her Houſe the Night the Accident happened, and came in a little after Eleven by the Town Clock, and did not go out again that Night: The Maid of the Houſe alſo, that put him to Bed, confirmed her Miſtreſs's Evidence, and affirmed, That the Clock ſtruck Twelve after the Priſoner was in Bed.

Then Mr. *Cowper* proceeded in his Defence, and ſaid, he would explain that Part of the Evidence that was given by *Sarah Walker*, Mrs. *Stout*'s Maid, where ſhe ſaid, her Miſtreſs ordered her to warm the Bed, and he never contradicted it; and deſired the Court would obſerve thoſe Words in the laſt Letter, *viz. No Inconvenience can attend your cohabiting with me*; and afterwards, *I won't fly for it, for come Life, come Death, I am reſolved*; from whence might be conjectured, What the Diſpute was between them at the Time the Maid mentioned: He thought it was not neceſſary ſhe ſhould be preſent at this Debate, and therefore might not interrupt her Miſtreſs in the Orders ſhe gave; but as ſoon as the Maid was gone, he offered theſe Objections: He informed her by what Accident he was obliged to lodge at Mr. *Barefoot*'s, and that the Family were ſitting up for him: That his ſtaying at her Houſe under theſe Circumſtances, would provoke the Cenſure of Town and Country, and therefore he could not ſtay whatever his Inclinations were; but his Reaſons not prevailing, he was forced to decide the Controverſy, by going to his Lodging; ſo that the Maid might ſwear true, when ſhe ſaid, he did not contradict her Miſtreſs's Orders.

His Inferences from the Letters.

Then he called Witneſſes, to ſhew it was impoſſible he could be at the drowning of *Sarah Stout*; becauſe he went away from her Houſe a Quarter before Eleven, and was at his Inn, the *Glove and Dolphin*, before the Clock ſtruck Eleven, and it would take up above half an Hour to go from Mrs. *Stout*'s to the Place where ſhe was drowned, and return to the *Glove* Inn. ------ And calling *Elizabeth Spurr* as a Witneſs, ſhe teſtified, That he came into the *Glove* Inn juſt as the Clock ſtruck Eleven, and ſtaid there a Quarter of an Hour before he went to his Lodgings: This Evidence was confirmed by two other Servants of the *Glove* Inn.

Evidence of the Time of Night he came to his Lodging.

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Sir *Thomas Lane* and Sir *William Aſhurſt* teſtified, That they had walked over the Ground above-mentioned, and it took them up above half an Hour, a uſual walking Pace.

Mrs. *Mince* was then called as a Witneſs, to diſprove what *Sarah Walker* had depoſed, namely, *That her Miſtreſs did not uſe to go out a Nights.*

Mrs. *Mince* teſtified That *Sarah Walker* told her, her Miſtreſs uſed to entertain Company in the Summer-houſe in the Night-time, unknown to her Mother: That ſhe uſed to go out a Nights, and take the Key with her, and make her Mother believe ſhe was gone to Bed; and that one Time ſhe went out at the Garden-Window when the Garden-Door was locked, and bid her not ſit up for her, ſhe would come in at her own Time; and what Time ſhe came, ſhe (the Maid) ſaid ſhe did not know, for ſhe was gone to Bed.

Witneſſes to Mr. Cowper's Character.

Then the Priſoner called Sir *William Aſhurſt*, Sir *Thomas Lane*, Mr. *Cox*, and Mr. *Thompſon* to his Reputation, who all gave him a great Character; and Mr. *Cox* ſaid, he had lived by him in *Southwark* Eight or Nine Years, and knew him to be a Perſon of Integrity and Worth, and all the Neighbourhood coveted his Company; that he took him to have as much Honour and Honeſty as any Gentlemen whatever, and of all Men he knew, he would be the laſt Man that he ſhould ſuſpect of ſuch a Fact as this: He believed nothing in the World could move him to entertain the leaſt Thought of ſo foul a Fact.

Marſon's Defence.

Here Mr. *Marſon* entered upon his Defence and ſaid, Their Buſineſs at *Hertford* was this: Mr. *Ellis Stevens* being Clerk of the Papers, and Mr. *Rogers* Steward of the *King's-Bench*, were obliged to wait upon the Lord Chief Juſtice out of Town, with the Marſhal of the *King's-Bench*; and on the *Monday* he went with them to the Lord Chief Juſtice's Houſe in *Lincoln-Inn-Fields*, from whence they all ſet out for *Hertford*; but he *(Marſon)* being an Attorney of the Borough Court, and having Buſineſs there that Day, when they came as far as *Kingſland*, returned back to *Southwark*, where he attended the Court as uſual, and about four ſet out again for *Hertford*; and on the Way at *Waltham-Croſs*, he met his Acquaintance Mr. *Hanks* a Clergyman, who had been to attend the Chief Juſtice returning to *London*; but he prevailed on him to go back with him to *Hertford*, and they galloped every Step of the Way, becauſe Night was coming on, and it was about Eight o'Clock when they came to *Hertford*, and he might be in a Sweat with riding ſo hard; but not in ſuch a Sweat as the Witneſs teſtified: That meeting with their Friends Mr. *Stevens* Mr. *Rogers*, Mr. *Rudkin*, and other Acquaintance of the Marſhal's at the Coffee-houſe, they went from thence to the *Glove and Dolphin*, where they ſtaid till about Eleven; and from thence, he and Mr. *Stevens*, and Mr. *Rogers* went to *Gurrey*'s, where they lodged, and drank three Bottles of Wine before they went to Bed, and had ſome jocular Converſation with their Landlord *Gurrey*: He believed Mr. *Stevens* might ask him if he knew Mrs. *Sarah Stout*, and what ſort of Woman ſhe was; and he believed he might ſay, my Friend may be in with her: That Mr. *Rogers* alſo asked him *(Marſon)* What Money he had got that Day? meaning at the Borough Court, and he anſwered, 50 *s.* to which *Rogers* replied, We have been here ſpending our Money, I think you ought to treat us? As to the Bundle mentioned, he knew of none, except a Pair of Sleeves and a Neckcloth.

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Mr. *Rogers*, in his Defence, ſaid, They came down with the Marſhal of the *King's-Bench*, and not thinking Mr. *Marſon* would have come that Day, had not provided a Lodging for him: That they went from the Coffee-Houſe to the Tavern, as Mr. *Marſon* had related; and there they had ſome merry and open Diſcourſe of this Gentlewoman, but he never ſaw her, or heard her Name before ſhe was mentioned there. *Roger's Defence.*

Mr. *Stevens* gave the ſame Account of their going to *Hertford*. *Stevens.*

The Judge demanding, If they did not talk of Mrs. *Stout*'s Courting Days being over? they all proteſted, There was not one Word of it.

Then they called Witneſſes, to ſhew the Occaſion of the Diſcourſe they had, in Relation to Mrs. *Stout*.

Their Witneſſes.

Mr. *Hunt* teſtified, That happening to be at the *Old Devil* Tavern, on *Sunday* Night before the laſt *Hertford* Aſſizes, with Mr. *Marſon* and 3 or 4 more of *Clifford's-Inn*, and there being a Diſcourſe of attending the Chief Juſtice out of Town, and of Mr. *Marſhal*'s courting Mrs. *Stout* of *Hertford*, one ſaid, If you do go, pray enquire after Mr. *Marſhal*'s Miſtreſs, and bring us an Account of her.

Mr. *Foſter* confirmed Mr. *Hunt*'s Teſtimony, and added, That either Mr. *Marſon* or Mr. *Stevens* ſaid, They would do their Endeavour, and enquire after the Lady.

Mr. *Hanks*, the Clergyman above mentioned, depoſed, That he met Mr. *Marſon* at *Waltham-Croſs*, and went back with him to *Hertford*, whither they came about ſeven or eight at Night; and having ſet up their Horſes, they went to the Coffee-Houſe, where was the Marſhal of the *King's-Bench*, the Gentlemen at the Bar, and Mr. *Rudkin*; and they went from thence to the *Glove and Dolphin*, where they ſtaid till about Eleven, and then he and Mr. *Rudkin* ſaw the three Gentlemen at the Bar to their Lodgings, and left them there.

Mr. *Rudkin* alſo depoſed, That he drank with the ſame Company at the *Glove and Dolphin* till after Ten, and then went with them to their Lodgings, and left them there.

Witneſſes to their Characters.

Then the Priſoners, *Stevens*, *Rogers*, and *Marſon*, called Mr. *Cox*, Major *Lane*, Sir *Robert Auſten*, Sir *John Shaw*, and ſeveral other Gentlemen of good Credit, to their Reputations, who ſaid, They were Men of Subſtance, Attorneys of good Buſineſs in the Marſhal's or Boroughs Courts, and had generally fair Characters: That they were Men who would not have been guilty of ſo foul a Fact, upon any Account.

Here

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A Reply to Mr. Cowper's *Defence.*

Here Mr. *Jones*, the King's Counſel, obſerved, That Mr. *Cowper* gave a different Evidence now, from that he gave before the Coroner; for then he ſaid, He never knew any Diſtraction, or Love-Fit, or any other Occaſion, that ſhould put the Deceaſed upon this extravagant Action; and now he would have the whole Scheme turn upon a Love-Fit: And *John Maſon*, being called as a Witneſs for the King, teſtified, That Mr. *Cowper* made Oath before the Coroner, That he did not know any thing that ſhould be the Occaſion of her Death; *She was a very modeſt Woman.*

Mr. *Jones* demanding, Whether they asked him, If he knew any Perſon ſhe was in Love with? *Maſon* anſwered, Mr. *Cowper* ſaid he knew but of one, and his Name was *Marſhal*, and Mr. *Marſhal* told him, he was always repulſed by her.

John Archer alſo depoſed, That Mr. *Cowper* being asked before the Coroner, If he knew any thing of the Occaſion of Mrs. *Stout*'s Death? he anſwered, He knew nothing of it.

Here one of the Jurymen deſired they might withdraw; but the Judge told him, They muſt make an End firſt.

Then Mr. *Jones* ſaid, The Friends of the Deceaſed would call ſome Witneſſes to her Reputation; and he believed the whole Town could atteſt, That ſhe was a Woman of a good Reputation: Indeed the Priſoners had produced ſome Letters without a Name, but if they inſiſted on any thing againſt her Reputation, they muſt call Witneſſes.

Judge *Hatſel* anſwered, He believed no body diſputed that ſhe might be a virtuous Woman, and her Brain, might be turned by her Paſſion, or ſome Diſtemper: And then he proceeded to direct the Jury in the following Manner.

The Judge's Directions to the Jury.

Gentlemen of the Jury, you have heard a very long Evidence; I am ſure that you cannot expect that I ſhould ſum it up fully, but I will take notice of ſome things to you, that I think are moſt material; and if I omit any thing that is material, I would deſire Mr. *Jones* (that is Counſel for the King) and Mr. *Cowper*, to put me in mind of it.

The Indictment againſt the Priſoners at the Bar is for a very great Crime, it is for Murder, which is one of the moſt horrid of all Crimes. You are to conſider, firſt, what Evidence you have heard to prove it; and though there be no direct Proof, you are to conſider what is Circumſtantial. They do begin with *Sarah Walker*, who was Mrs. *Sarah Stout*'s Maid, and ſhe tells you, That Mr. *Cowper*, when he came to this Town upon *Monday* the 13th of *March* laſt, came to Mrs. *Stout*'s Houſe and dined there, and went away about Four of the Clock in the Afternoon; but ſhe tells you, that the *Friday* before, there came a Letter from Mr. *Cowper*'s Wife to Mrs. *Stout*, to let her know that Mr. *Cowper* would come and lodge at their Houſe at *Hertford*, at the Aſſizes; ſo that when he came, ſhe thought that he had intended to have done according to that Letter. She ſaith, That after Dinner Mr. *Cowper* went away, and came again at Nine at Night, and there he ſupped, he was deſired ſo to do (and indeed had been invited to Dinner alſo that Day:) And ſhe doth ſay That after Supper there was a Fire made in his Chamber (for this young Gentlewoman, Mrs. *Stout*, preſſed him to lie at their Houſe) and ſhe orderd his Maid to warm his Bed; and I believe, ſays ſhe, Mr. *Cowper* heard her ſay ſo, for he was nearer to her than I, at that Time; and he doth not deny but that he heard it: She ſays, that accordingly ſhe went up to warm his Bed, and having ſtaid there a-while, ſhe heard the Door clap; and when ſhe came down into the Parlour, where ſhe had left them, they were both gone; and that ſhe could not tell what the Meaning of it was, and they waited for her all Night, old Mrs. *Stout* and this Maid, and ſhe did not come in all Night, nor was afterwards ſeen alive; but Mr. *Cowper* was the laſt Perſon ſeen in her Company.

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The other Witneſſes that came afterwards, ſpeak concerning the finding of the Body in the River, and tell you in what Poſture it was. I ſhall not undertake to give you the Particulars of their Evidence, but they tell you, She lay on her Right Side, the one Arm up even with the Surface of the Water, and her Body under the Water; but ſome of her Cloaths were above the Water, particularly one ſays, the Ruffles of her Left Arm were above the Water: You have heard alſo what the Doctors and Surgeons ſaid on the one Side and the other, concerning the Swimming and Sinking of dead Bodies in the Water; but I can find no certainty in it, and I leave it to your Conſideration.

Another Circumſtance they build on, and which ſeems to be material, is, of her Belly being lank, and that there was no Swelling; whereas, ſay they, when a Perſon is drowned, there is a great deal of Water goes in and makes the Belly to ſwell; but here was no Swelling that Morning ſhe was taken out, and no Water came out of her Mouth and Noſtrils only a little Froth there was, and her Belly was lank: But, ſay they on the other Side, that may very well be; for, perhaps, ſhe might be choaked immediately, as ſoon as ſhe was in the Water; and, ſay they, you may not wonder at that, for if ſhe went to drown herſelf, ſhe would endeavour to be choaked as ſoon as ſhe could; for thoſe Perſons that are drowned againſt their own Conſent, do ſwallow a great deal of Water; but thoſe that drown themſelves, do not ſwallow much Water, for they are choaked immediately by the Water going into the Windpipe, that we commonly call, Going the wrong Way. The Doctors and Surgeons have talked a great deal to this Purpoſe, and of the Waters going into the Lungs or the Thorax; but unleſs you have more Skill in Anatomy than I, you will not be much edified by it; I acknowledge I never ſtudied Anatomy, but I perceive that the Doctors do differ in their Notions about theſe things: But as to Matter of Fact, it is agreed to by all the Witneſſes for the King, that her Body was lank, her Belly was thin and there was no Sign of any Water to be in it. They on the other Side tell you, That her

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her Stays were on, and ſhe was ſtrait-laced, and that might occaſion her Belly's being ſo ſmall, and hinder the Water from going in.

Gentlemen, I was very much puzzled in my Thoughts, and was at a Loſs to find out what Inducement there could be to draw in Mr. *Cowper*, or theſe three other Gentlemen, to commit ſuch a horrid, barbarous Murder: And on the other Hand, I could not imagine what there ſhould be, to induce this Gentlewoman, a Perſon of a plentiful Fortune, and a very ſober good Reputation, to deſtroy her ſelf.

Now, Gentlemen, I muſt confeſs, the Evidence that the Defendants have given by theſe Letters, if you believe them to be this Gentlewoman's Hand Writing, do ſeem to fortify all that Mr. *Cowper*'s Witneſſes have ſaid, concerning her being Melancholy; it might be a Love-Diſtraction, and ſhe might have been a virtuous Woman for all that; for it might be a Diſtemper which came upon her, and turned her Brains, and diſcompoſed her Mind; and then no Wonder at her writing thus, in a Manner different from the reſt of the Actions of her Life. Gentlemen, you are to conſider and weigh the Evidence, and I will not trouble you any more about that Matter.

As to theſe three other Gentlemen, that came here to this Town at the Time of the laſt Aſſizes, what there is againſt them you have heard: They talked at their Lodging at a ſtrange Rate, concerning this Mrs. *Sarah Stout*, ſaying, *Her Buſineſs was done*, and that *there was an End of her Courting-Days*, and that *a Friend of theirs was even with her by this Time.* What you can make of it, That I muſt leave to you, but they were very ſtrange Expreſſions; and you are to judge whether they were ſpoken in Jeſt, as they pretend, or in Earneſt. There was a Cord found in the Room, and a Bundle ſeen there, but I know not what to make of it. As to Mrs. *Stout*, there was no Sign of any Circle about her Neck, which, as they ſay, muſt have been, if ſhe had been ſtrangled: Some Spots there were, but it is ſaid, poſſibly thoſe might have been occaſioned by rubbing againſt ſome Piles or Stakes in the River. Truly, Gentlemen, theſe three Men, by their Talking, have given great Cauſe of Suſpicion; but whether they or Mr. *Cowper* are guilty or no, That you are to determine. I am ſenſible I have omitted many Things, but I am a little faint, and cannot repeat any more of the Evidence.

All the Priſoners acquitted.

Then the Jury withdrawing for about half an Hour, returned with their Verdict, That neither Mr. *Cowper*, or any one of the other three Priſoners were Guilty: And thereupon they were all diſcharged.

An Appeal lodged againſt Mr. Cowper, and his Friends.

Mr. *Spencer Cowper*, and his three Friends, having been acquitted at the Summer Aſſizes at *Hertford*, in the Year 1699, as is related already, a Writ of Appeal was ſued out, the Beginning of *March* following, againſt the ſaid *Cowper*, *Marſon*, *Stevens*, and *Rogers*, at the Suit of *Henry Stout*, (Heir at Law of the deceaſed *Sarah Stout*) then about ten Years of Age; and Mrs. *Mary Stout*, Mother of the deceaſed, was on the 13th of *April* following, admitted Guardian to the Appellant, in order to proſecute the ſaid Suit.

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The Under-Sheriff of *Hertford*, *Boſtock Toller*, not returning the Writ, was ſerved with ſeveral Rules in *Eaſter* Term by Mrs. *Stout* the Guardian, to compel him to make a Return: At length Mr. *Toller* attended the Court of *King's-Bench*, and made Affidavit, That upon the 16th of that Inſtant *April*, (being the Day after the Return of the Writ, and three Days after Mrs. *Mary Stout* was admitted Guardian to the Appellant), he delivered the Writ into the Infant's Hands.

The Writ given to a Child, by the Sheriff, and burnt.

The Court of *King's-Bench* hereupon ordered *Toller* to be examined upon Interrogatories, who in Juſtification of himſelf, declared, That the Appellant, with his Mother, his Uncle, and Aunt, came to him, and delivered him a Note from *William Cowper*, Eſq; the Brother of *Spencer*, informing him, that the Infant who attended him, was the Plaintiff in the Appeal, and one of the Women his Mother, and that, at their Requeſt, he delivered the Writ to the Infant; that he afterwards deſired the Infant and his Mother to give him the Writ back again, but they declared, *The Infant, with Advice, had burnt the Writ.*

The Sheriff fined.

A new Writ refuſed.

The Court of *King's-Bench* hereupon committed the ſaid *Toller*, and ſet a Fine of two hundred Marks upon him. And Mrs. *Stout* the Guardian, petitioned the Lord Keeper for a new Writ of Appeal, the Time (the Year and Day) being elapſed for ſuing out a Writ of Courſe; but her Petition was rejected.

Mrs. *Stout*, the Guardian, afterwards drew up her Caſe, and preſented it to the Members of the Commons, at the Door of the Houſe, as I am informed, in hopes of obtaining an Act to renew the Writ of Appeal; but they ſaid, they would not bring in a Bill on purpoſe to try Mr. *Cowper* and his Friends again, after they had been fairly acquitted, and ſo the Matter was entirely dropped; only both Parties, in printed Papers, appealed to the World, as to the Juſtice of their reſpective Caſes.

Before I make any Obſervations of my own, therefore, on theſe Proceedings, I ſhall ſhew what Reflections the Parties themſelves made on them. *Spencer Cowper* and his three Friends obſerve, That they were all four in good Employments, and eaſy in their Circumſtances; and it was not credible, therefore, they ſhould commit ſo foul a Crime, eſpecially when they could have no Intereſt to ſerve, or Paſſion to gratify, by doing it: For though it was at firſt reported, that Mr. *Cowper* did it for the Sake of Gain, this was not at all inſiſted on by the Proſecutors at the Trial, though he challenged them to ſhew in what Reſpect he could be a Gainer by this Gentlewoman's Death.

The Caſe ſtated by Spencer Cowper.

Nor was there, indeed, any Proof of a Murder being committed by any one; for the Coroner's Inqueſt, having a freſh View of the Body, on the Day it was found, after they had conſulted two Surgeons and a Midwife, gave a Verdict, that the deceaſed drowned herſelf, being *Non compos*; and nothing but the Zeal of the Quakers for the Reputation of their Sect, and to ſhew they

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they were not liable to the Infirmities of the reſt of the World, aſſiſted by the Heat of a Faction, could ever have ſtirred up this Proſecution, that had made ſo much a Noiſe in the World.

That on the Day the Corps of the Deceaſed was found, Mr. *Cowper* was examined by the Coroner's Inqueſt, and then gave an exact Account of every Circumſtance which had ſince been proved againſt him: That about a Month after, all the ſaid four Gentlemen were ſeverally ſent for, and readily came, to the Lord Chief Juſtice *Holt*, by whom they were examined; and the Truth of what they atteſted before him had never been contradicted or falſified, but all proved and made good at their Trial.

That after this Examination they were diſmiſſed without Bail, and might have fled, if they had been conſcious of any Guilt.----- That upon ſome Suggeſtions of the Proſecutors, they were examined a ſecond Time, and admitted to Bail: But upon the taking up and opening the Deceaſed, ſix Weeks after her Death, and ſome Informations and Certificates of thoſe that viewed the Corps, Mr. *Cowper* and Mr. *Marſon* were committed, and the other two ſtill continued upon Bail.

That the Proſecutors procured thoſe Informations and Certificates, by applying themſelves to ſuch Perſons (and no others) as they knew were profeſſed Enemies to the Family of the *Cowpers*, on Account of the Controverſies ariſing at Elections.

That Mr. *Marſon* was afterwards admitted to Bail; but Mr. *Cowper* remained in Priſon all *Trinity* Term, 1699, and Part of the Vacation following, for the Space of two Months, till the Aſſizes at *Hertford* drew near, and then he ſued out a Writ for his Removal from *London* to be tried at *Hertford*, fearing his Enemies deſigned to keep him in Jail, or at leaſt to continue the Slander and Proſecution as long as they could. That the Proſecution was carried on againſt them with all imaginable Induſtry and Artifice, an Election-Intereſt being thought in a great Meaſure to depend on the Succeſs of it: However, their Innocence was ſo manifeſt, that they were all acquitted on their Trial.

That the Proſecutors, to be further vexatious, and continue the Calumny, though they had nothing to object to the Fairneſs of the Trial, or any new Evidence to give, ſought for an Heir Male, in order to bring an Appeal, and try them again; and though they had found out the Infant, *Henry Stout*, in the ſame long Vacation 1699, and might have ſued out the Appeal next Term; they did not get the Writ of Appeal ſealed, till the very laſt Seal within the Year after the Deceaſed was drowned, and not above three or four Days before the End of the Year; which Delay, they ſuggeſt, was purely malicious, and deſigned merely to continue the Calumny.

That the Writ was at laſt ſued out, without either the Knowledge of the Plaintiff himſelf, or of his Mother (his Guardian by Nature), without whoſe Approbation the Writ ought not to to have been ſued out by Law, nor the Infant engaged in ſuch a Proſecution for Blood.

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That as ſoon as the Infant and his Mother underſtood what was done, and that the Suit was only carried on for Revenge, they declared their Diſlike of the Proceeding, and went with an Uncle and Aunt of the Infant's, to Mr. *Toller*, the Under-Sheriff, and demanded the Writ, tendering him his Fee for the Return thereof, which he (not knowing then of any Guardian aſſigned the Infant) delivered to them.

And when the Under Sheriff was examined upon Interrogatories, how far the Appellees (*Spencer Cowper* and his three Friends) were concerned in getting the Writ from the Sheriff, the ſaid Sheriff, upon Oath, denied all Correſpondence with the Appellees, or any on their Behalf, touching the Delivery of the ſaid Writ, and denied he had any Reward, or Promiſe of Reward, or had any Security given to indemnify him for doing it; and that he delivered the Writ and Return to the Appellant and his Friends, as he believed it was fair and lawful for him to do, and for no other Reaſon whatever.

That Mrs. *Mary Stout*, the Mother of the Deceaſed, preferred a Petition to the Lord Keeper for a new Writ of Appeal; and the Infant (the Appellant) and his Mother preferred another Petition to the Lord Keeper, diſowning the former Writ, as iſſued out without their Conſent or Approbation, and deſiring that no new Writ might be iſſued out in the Infant's Name. And the Lord Keeper, being aſſiſted by the Maſter of the Rolls, and ſeveral of the Judges, having heard both Parties, by the reſpective Counſel, were unanimouſly of Opinion,

1. That the Chancery had Power to relieve in ſuch a Caſe, and to renew the Writ, if it were juſt ſo to do.

2. That, in this Caſe, it was not juſt or reaſonable.

And the Reaſons inſiſted on by Mr. *Cowper*'s Counſel, to maintain the laſt Point, were, 1. That the Writ was ſued out clandeſtinely and fraudulently, without the Conſent of the Appellant, or his next Friend; and no Guardian aſſigned had any Thing to do with it, till the Writ was pending.

2. Becauſe it was deferred two Terms after the Acquittal of Mr. *Cowper*, &c. and not taken out till about four Days within the End of the Year; which ſhewed they did not deſign Juſtice, but to ſpin out the Calumny as long as they could, malicioufly, and vexatiouſly.

3. That an Acquittal on an Indictment was a Bar to an Appeal at Common Law; and tho' that Bar was taken away by the Statute of *Hen.* VII. which let in the Appeal within the Year and Day, leſt Perſons ſhould procure themſelves to be fraudulently indicted and acquitted on faint Proſecutions; and as this Proſecution was far from being a faint one, the Appellees were within the Reaſon and Equity of that Plea; and the rather, for that Mrs. *Stout*, the Mother of the Deceaſed, who would proſecute the Appeal, was the principal Proſecutor on the Indictment, and did it with all imaginable Induſtry, aſſiſted by the united Intereſt of the *Quakers*, and a prejudiced

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diced Party in the Town of *Hertford*, diſobliged on the Score of Elections; and four Appeals have not been favoured ſince the Statute of *Hen.* VII. except in Caſes of Conviction, and Pardon obtained by Surprize, or after ſome freſh Diſcovery by additional Evidence, which was not pretended to in this Caſe.

The Caſe ſtated by Mrs. Stout.

In Anſwer to what Mr. *Cowper* and his Friends had advanced in Relation to the Appeal, Mrs. *Mary Stout*, the Mother of the Deceaſed, and her Party anſwered, That the ſaid Writ of Appeal being ſued out within the Year, ſhe cauſed it to be delivered to *Boſtock Toller*, the Under-Sheriff of the County of *Hertford*, that he might apprehend the Appellees mentioned in the Writ; and fearing he might be remiſs in it, ſhe ſent to him to know what he had done, Whether he had executed the ſame, or would return, the Parties were not to be found? To which *Toller* anſwered, *Mrs.* Stout *is a very buſy, uneaſy Woman; but, however, when the Writ is out, I will make ſuch Return thereof as the Law directs.*

That on the 13th of *April* the ſaid Mrs. *Stout* was admitted Guardian to the Appellant; and on the 15th, being the firſt Day after *Eaſter* Term, ſhe appeared perſonally in the Court of *King's-Bench*, in order to arraign the Appellees; but the Sheriff had not returned the Writ.

Whereupon the Court was moved next Day, in Behalf of Mrs. *Stout*, That a ſhort Day might be given the Sheriff, peremptorily to make his Return: Whereupon it was ſuggeſted, that no Writ of Appeal was left with Mr. *Toller*, whereby Mrs *Stout* loſt the Benefit of her Motion, and was forced next Day to get an Affidavit of the Delivery of the Writ; and moved again for a Rule to compel him to appear and make a Return of the Writ; which Rule being ſerved upon *Toller*, he appeared, and acknowledged the Receipt of the Writ; but made Oath he delivered the Writ into the Infant's Hand on the 16th of *April*, being the Day after the Writ was returnable, and three Days after Mrs. *Stout* was admitted Guardian to the Appellant.

Whereupon the Court ordered *Toller* to be examined upon Interrogatories, concerning the Delivery of the Writ; but Mrs. *Stout* was forced to be at the Charge of two or three Orders, before he would come to be examined: And then he was pleaſed to own the Receipt of the Writ of Appeal; and that he knew Mrs. *Stout* was Guardian, and yet delivered the Writ to the Infant and his Mother (as related above).

In this Examination alſo, *Toller* acknowledged, That Mr. *William Cowper*, Brother of *Spencer*, ſent him a Letter, to know whether any Writ of Appeal was come to his Hands, againſt his Brother *Spencer*; and he *(Toller)* informed him, there was, and ſent him the Contents of the ſaid Writ: And, that he gave *Spencer* the like Information; whereby it appeared, there was a Correſpondence between *Toller* and the *Cowper*'s: Of which the Court of *King's-Bench* were ſo ſenſible, that he was fined 200 Marks. But this giving Mrs. *Stout* no Satisfaction for the Blood of her Daughter, ſhe petitioned the Lord Keeper, as above related, for a new Writ: But the Matter being heard before him, and no poſitive Proof appearing then, that any of the Appellees were privy to the Deſtruction of the firſt Writ, it was not thought reaſonable to grant a new Writ; and Mrs. *Stout*'s Petition was, chiefly for that Reaſon, rejected: But could ſhe have imagined, all the Appellees would have pretended Ignorance, as to the Deſtruction of the Writ; and that there was any Difference between the Writs being loſt by Accident or Deſign, ſhe could have informed the Court of a more particular Intelligence, concerning the Deſtruction of the Writ, and by whoſe Order it was done, and at whoſe Chamber it was burnt; which would ſufficiently evince, whether the Appellees were privy to the Deſtruction of it.

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And, whereas it had been reported, that this Proſecution was merely vexatious, begun by a Body of Quakers, and eſpouſed by a Faction at *Hertford*, againſt the *Cowper*'s; every one ought to conſider, if it was their own Caſe, to have an only Child murdered, and her Reputation rendered infamous to Poſterity; Whether Nature and Duty would not have obliged them to uſe all poſſible Means to diſcover the Cauſe thereof? And whether they would not think it hard to have their Endeavours reflected on, and their Diligence cenſured, as the Effect of Party-Malice?

It had been objected alſo, That the proſecuting this Writ, had been maliciouſly delayed, to keep the Appellees in an uneaſy Suſpence: To which Mrs. *Stout* anſwered, That ſhe ſhould have ſued out the Writ ſooner, but ſhe could not find out the proper Perſon to make Appellant, though the moſt diligent Search was made for near half a Year; but, the very next Day ſhe was prepared to make out his Pedigree, ſhe cauſed the Writ of Appeal to be ſued out; ſo that it was her Misfortune, not her Fault, that there was ſo long a Delay.

And though it was commonly urged, as a ſtrong Argument againſt bringing the Appellees to a ſecond Trial, that ſhe had no new Evidence againſt them; ſhe aſſured them, ſhe had more material Evidence than had been yet made publick; and ſhe believed the Appellees did not care to ſtand the Teſt of it: Or why ſhould there be ſo vigorous an Oppoſition againſt ſo plain an Act of Juſtice? If nothing further could be proved againſt them, as they inſinuated, it would have been much more for their Reputation, to have undergone a ſecond Trial, than to have meanly eluded and undermined the Courſe of Juſtice, by the Deſtruction of the Writ of Appeal.

Then Mrs. *Stout*'s Friends proceed to make ſome Reflections on the Trial: And, firſt, it is obſerved, That none of the Phyſicians that appeared for Mr. *Cowper*, pretended to affirm, That a drowned Body would have no Water in it; they only ſaid, *A very little* would drown a Perſon; but in this Corps there was none at all.

And being asked, If Water would not have putrified the Parts in ſix Weeks Time, none of them directly denied it; but ſaid, The Stomach would be leſs putrified than the Lungs:

But

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But here neither Stomach or Lungs were putrified.

That the Difference made between a Perſon's being drowned by Accident and Deſign, was ridiculous; becauſe it was certain, with what Deſign ſoever a Man might go into the Water, before he was half dead, he would be deprived of his Senſes; and how he would govern himſelf then, might eaſily be determined.

And from theſe and other Reaſons, they conclude, ſhe was not drowned: They ſuppoſe rather, ſhe was knocked down, by a Blow on her Left Ear, from a large Settlement of Blood there; and after ſhe was down, they think it probable, ſhe was ſtrangled by the Gripe of a ſtrong Hand, from the Stagnation of Blood on both Sides of her Neck, under her Ears.

The Circumſtances that induced them to believe, ſhe was not acceſſary to her own Death, were, her being found without her Gown or Nightrail, which were probably torn off in the Scuffle: And when her Gown was found about a Week before the Trial, it appeared to be torn all to Rags, and her Nightrail was never found: 2. From her floating in the Water, ſo ſoon as no drowned Body ever did: 3. Becauſe her Belly was not ſwollen: 4. Becauſe no Water came out of her: 5. Becauſe her Inward Parts were not putrified (though other Parts that had been injured were;) which would have been, forty-ſix Days after her Death, if there had been any Water in them: 6. From the ſeveral Settlings of Blood, which was uſual in drowned Perſons: 7. From what was ſworn againſt *Marſon*, and the other two, at the Trial, as that one of them ſaid, *She has turned me off; but a Friend of mine is even with her by this Time: Her Buſineſs is done; her Courting-Days are over, &c.* And *Marſon*'s pulling out Money and ſwearing he would ſpend it all for Joy the Buſineſs was done: 8. From the Sentiments of the Grand Jury; who, after a nice Examination, were of Opinion, ſhe was murdered, as were ſeveral of the Petit Jury; but by whom they could not tell: 9. From Mr. *Cowper*'s ſwearing before the Coroner, directly contrary to what he made his Defence at the Trial.

They are poſitive alſo, that the Letters produced in Court were not genuine, becauſe they were not at all ſuitable to her Character; and obſerve, That if the Witneſſes then in Court, had been examined to her Reputation, a great deal of that Dirt that had been thrown upon her, would have been wiped off. And what Reluctance ſoever Mr. *Cowper* pretended to expoſe her Weakneſs, and produce her Letters; he acknowledged, he had ſhewn thoſe Letters to Mr. *Marſhall* a repulſed Lover, and to his Brother, before her Death, and afterwards printed and publiſhed them.

And what made it very improbable ſhe was acceſſary to her own Death, was, That the very Evening before her Corps was found, ſhe deſired a young Gentlewoman of the Town to lie with her all Night; and when ſhe refuſed, engaged her however to dine with her the next Day, telling her what they ſhould have for Dinner.

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That if the Deceaſed had been for ſeveral Years ſo fond of this *Joſeph*, it was much his Wife ſhould diſcover nothing of it; but importune her frequently to come to *London*, that ſhe might enjoy her dear Company: Nor was it probable, if the Deceaſed was ſo furiouſly in Love, ſhe would have rejected the Invitation; but would have choſen to have reſided in Town, where ſhe might have enjoyed him with greater Privacy.

As to there being no Proof at the Trial, of her Relations miſſing any of her Money; the Reaſon of this was, becauſe thoſe who could have atteſted it, and ſpeak materially on that Head, were Quakers, and were not ſuffered to give Evidence, becauſe they ſcrupled taking an Oath: But that, in Truth, her Relations wanted 1000 Pounds of her Original Fortune, beſides the Improvements ſhe had made of it: And they inſinuate, that ſhe truſted Mr. *Cowper* with a thouſand Pounds to put out for her ſeparate Uſe, in caſe ſhe married, which was never heard of: To which Mr. *Cowper*'s Friends replied, That this was but a Say-ſo; and defied them to make any Manner of Proof of it. *Mr. Cowper's Reply.*

Mr. *Cowper*'s Friends alſo made a great Jeſt of that Piece of Evidence, which the *Dimſdales* gave, to prove *Sarah Stout* was a Virgin, namely, *That they found the* Uterus *perfectly free and empty, and of the natural Figure and Magnitude uſually in Virgins:* This they obſerve, cannot amount to a Proof, ſhe was a Virgin: All that could be inferred from it, was only, that ſhe had not conceived; and if it was poſſible for a Woman *in Coitu*, to miſs of Conception, the Woman might, notwithſtanding the Carnal Contact, retain the natural Figure uſually in Virgins; and all this implied no more than a bare Probability, that ſhe had not known Man: They never heard before, that the Figure and Magnitude of the Womb, were numbered amongſt the indubitable Marks of Virginity; and as to the State of the *Vagina*, the *Myrtiform Caruncles*, and *Hymen*, there was not a Word ſaid of them; and if there had, it would only have furniſhed Matter of Deriſion, the Body having been ſo long interred: And therefore, for any thing in the Surgeons Affidavit, ſhe might be no Virgin; though Charity might induce them to hope ſhe was.

Thus we find the reſpective Parties differing very widely in their Conjectures, concerning *Sarah Stout*'s Death, and the Innocence of *Spencer Cowper*. Had I been upon his Jury, I muſt confeſs, I ſhould have acquitted him, of murdering her by his own Hands, or the Hands of his three Friends, *Rogers*, *Stevens*, and *Marſon*. I can never believe a Man of Mr. *Cowper*'s Figure and Circumſtances in the World, would dare to communicate a Secret of this Nature to three People, and deſire them to be Actors in the Tragedy; which muſt have ruined his Character and Fortune in the World, if any of them had diſcovered the wicked Propoſal, though the Fact had never been committed: Neither can I imagine, that three Men in their Circumſtances, would ever have ſubmitted to become Cutthroats and Aſſaſſins, for all they could expect *Remarks on the Trial of Spencer Cowper, &c.*

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pect from him; and much leſs for ſo trifling a Reward, as they were ſuppoſed to have.

On the other Hand, her being found floating in the River without her Gown, and no Water in the Corps, and her Gown afterwards found torn in Pieces, are ſtrong Circumſtances to induce one to think ſhe was not drowned, either by herſelf others, but came by her Death ſome other Way: However, as neither Mr. *Cowper* or his three Friends, could be ſuppoſed to have been the immediate Authors of her Death, and no other Perſon was charged with it, the Jury could not do otherwiſe than find them *Not guilty*; eſpecially if we conſider, there was no Time when they could be ſuppoſed to commit the Fact, being all in their Lodgings at eleven at Night, the very Inſtant it muſt have been done, if done at all by them; much ſooner it could not be done, becauſe Mr. *Cowper* went from her Houſe at a Quarter before eleven, and was at his Inn when the Clock ſtruck eleven, ſo that there was but one Quarter of an Hour, in which it was poſſible they could act that Tragedy in; and conſidering the Diſtance of the Places, and the Buſineſs to be tranſacted, this to me ſeems impoſſible.

It has been objected indeed, That if Mr. *Cowper* had been innocent, he would not clandeſtinely have procured the Writ of Appeal to be deſtroyed, and ſo ſtrenuouſly have oppoſed the iſſuing out of another; but I am apt to think, any Man in the like Circumſtances, would have done the ſame, and have avoided a ſecond Trial, if he could; eſpecially conſidering the whole Body of Quakers ſupported and countenanced the Proſecution againſt him, and it was impoſſible to divine, how another Judge and Jury might have taken the Matter. The World, they knew, were divided in their Opinions; and if two or three reſolute Men, who were inclined to have thought him guilty, had been upon the next Jury, both his Life and Reputation would have been in a great deal of Danger, however ſatisfied the reſt of the Jury might be of his Innocence: And though the Intereſt of the *Cowper*'s was conſiderable enough to have obtained a Pardon, where a Pardon would have availed them; yet in the Caſe of an Appeal, no Pardon can be granted; and, if it might, this would not have reſtored his Character, after a Conviction. As it was, Mr. *Cowper* does not ſeem to have ſuffered much in his Circumſtances by this foul Charge, for he became one of the moſt eminent Council at the Bar, was advanced to be Chief Juſtice of *Cheſter*, and afterwards conſtituted a Judge of the Common Pleas, in which Poſt he died in the Reign of King *George* II. few Lawyers obtaining a better Reputation in all Reſpects than he enjoyed, for the Space of thirty Years and upwards, after this unhappy Accident, (*ſave in the Matter of* Uriah *the* Hittite.) Thus we ſee what Trouble and Hazard frequently attends Criminal Pleaſures! Though Men may perſuade themſelves, and the unfortunate Creatures they abuſe, that ſuch Liberties are allowed to Chriſtians as well as *Mahometans*; yet, as the Generality of Chriſtians will ſcarce ever be of that Mind, no Man will ever advance his Reputation by venturing on forbidden Embraces in a Chriſtian Country: Theſe will caſt a Blemiſh on all his Actions, how plauſible ſoever, and remain an eternal Blot upon his Memory.

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The Trial of MARY BUTLER, for a *Fraud*, at the *Old-Baily*, *London*, the 12th of *October*, 1699. 11 *W.* III.

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Butler's *Trial*.

THIS being no more than an ordinary Trial for a Cheat, I ſhall but juſt mention the Caſe.

Caſe.

The Indictment charges, That the ſaid *Mary Butler*, intending to put a Cheat upon Sir *Robert Clayton*, Knight and Alderman of *London*, counterfeited a Bond from Sir *Robert* for the Payment of 20,000 *l.* to her, after his Deceaſe; and that ſhe publiſhed the ſaid Writing as Sir *Robert Clayton*'s Deed; of which ſhe was convicted, and ſentenced to pay a Fine of five hundred Pounds to the King, and to be impriſoned till ſhe paid it.

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Proceedings in the Duke of *Norfolk*'s Divorce; which were begun in the Year 1691——and continued in ſeveral Courts, to the Year 1700. 12 *W.* III.

1700. 12 W. III.

Duke of Norfolk's *Divorce*.

THIS being no State Matter, I ſhall only give a ſhort Abſtract of the Caſe; and the rather becauſe theſe Proceedings are very defective in the Trials at large.

Proceedings before the Lords.

On the 7th of *January*, 1691. a Bill was brought into the Houſe of Lords, to diſſolve the Marriage of *Henry* Duke of *Norfolk*, Earl Marſhal of *England*, with the Lady *Mary Mordant*, and to enable him to mary again; for that the ſaid Lady had been guilty of Adultery.

Whereupon the Dutcheſs petitioned to be heard by her Counſel againſt the ſaid Bill, and that the Duke might be more particular in his Charge: And the Duke thereupon ſet forth, that ſhe had committed Adultery with Sir *John Germaine*, at *Whitehall* and *Windſor*, in the Months of *June*, *July*, and *Auguſt*, in the Year 1685; and during ſeveral other Months, at the Pariſh of *St. Margaret*'s *Weſtminſter*, and at the Pariſh of *Lambeth* in *Surry*, in the Years 1690, and 1691.

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The Dutcheſs, in her Anſwer, denied the Charge; and recriminated, That her Husband, the Duke, was guilty of Adultery, and had continued that Courſe of Life for ten Years; and therefore could not, by Law, ſue a Divorce againſt her for that Crime, if ſhe had been guilty of it.

The Peers afterwards, hearing the Counſel and Evidence on both Sides, and having debated the Matter among themſelves, threw out the Bill upon the ſecond reading.

An Action againſt Sir John Germaine.

The Duke afterwards, in the Year 1692, brought an Action againſt Sir *John Germaine*; and, in his Declaration, charges him with enticing away his Dutcheſs, and living in Adultery with her; which was tried in the Court of *King's-Bench*, in *Michaelmas* Term the ſame Year, and the Jury gave a Verdict for the Plaintiff; but no more than 100 Marks Damages, though the Duke had laid his Damages at 100,000 *l.* However, the Duke having now proved the Fact in a Court of Law, exhibited a ſecond Bill for a Divorce in the Houſe of Peers the ſame Year, 1692. but this alſo was thrown out: Whereupon ſome Overtures were made for accomodating all Differences between them, and Articles were executed, whereby the Duke and Dutcheſs agreed to live ſeparately; the Duke allowing her ſuch a Maintenance as ſhe required: But the Duke, being informed ſhe had offended again, exhibited a third Bill for a Divorce, in the Houſe of Peers, 1699, in which he met with Succeſs: The Bill paſſed both Houſes, and received the Royal Aſſent.

A ſecond Bill in the Houſe of Peers.

A third Bill.

This Act recites, That *Henry* Duke of *Norfolk*, and Earl Marſhal of *England*, did, ſome Years before, marry the Lady *Mary Mordant*; and that ſhe had, for divers Years, lived in Separation from him, and had unlawful Familiarity, and adulterous Converſation with Sir *John Germaine*, Bart. That ſhe was guilty of Adultery on her Part, and had broken the Bond of Matrimony: And foraſmuch as the Duke had no Iſſue, nor could hope for any but ſpurious Iſſue, to ſucceed him in Honour and Eſtate, unleſs the ſaid Marriage was declared void by Act of Parliament, and he was enabled to marry again, he prays, that the ſaid Bond of Matrimony be, and it is thereby enacted and declared to be, diſſolved, vacated, and made void, to all Intents and Purpoſes whatſoever; and that it ſhall be lawful for the ſaid Duke to contract Matrimony with any other Woman, or Women, as if the ſaid Lady *Mary* were naturally dead; and that all and every the Children, born in ſuch Matrimony, ſhall be deemed born in lawful Wedlock, and inherit the Honours and Eſtate of the ſaid Duke, according to the Courſe of Inheritances within this Realm. And it was enacted, That the ſaid Lady *Mary* ſhould be barred and excluded all Dower and Thirds in the ſaid Honours, Lands, and Hereditaments, of the ſaid Duke; and that, all Conveyances, Jointures, and Settlements made by his Grace, or his Anceſtors, for the Uſe and Benefit of the ſaid Lady *Mary*, or the Iſſue of her Body, ſhould be utterly void: And alſo, that all Limitations and Creations, of any Uſe, and Eſtate, Power, or Truſt, made by the Anceſtors of the ſaid Lady *Mary*, to or for the Uſe or Benefit of the ſaid Duke, his Heirs or Aſſigns, out of any of the Lands or Hereditaments of any of the Anceſtors of the ſaid Lady *Mary*, ſhould be void. And it was further enacted, That the ſaid Duke, his Heirs, Executors, or Adminiſtrators, ſhould, before the 25th of *March*, 1701, pay unto the ſaid Lady *Mary*, or her Aſſigns, the Sum of 10,000 *l.* which was her Marriage Portion; and, in Default of Payment thereof, the ſaid Lady *Mary* ſhould be entitled to ſuch Jointure, and other Advantages, as ſhe might have claimed by Virtue of her Marriage Settlement, dated the 13th Day of *June*, 1677; and by Virtue of the Agreements contained in certain Articles, dated the 28th of *April*, 1694; and alſo ſhould enjoy, during the joint Lives of the ſaid Duke and Dutcheſs, 500 *l. per Annum*, by Virtue of a Quadrupartite Indenture, made the 15th of *June*, 1694: And in ſuch Caſe, the ſaid Duke, his Heirs, *&c.* ſhould be diſcharged from the Payment of the ſaid 10,000 *l.*; but on Payment of the ſaid 10,000 *l.* the ſaid Lady *Mary* ſhould be wholly barred and excluded of her ſaid Jointure, and of all other Advantages out of the Real and Perſonal Eſtate of the ſaid Duke.

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Remark.

Notwithſtanding the Duke carried his Point, and obtained a Law on Purpoſe to divorce him from the Dutcheſs, and impower him to marry again, he never did marry, or leave any lawful Iſſue, which were made the principal Inducement for his obtaining it.

The Trial of Captain WILLIAM KIDD, for *Murder*, at the Admiralty Seſſions, held at the *Old-Baily*, *London*, the 8th of *May*, 1701, 13 *W.* III.

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THE Caſe was thus: Captain *Kidd* was Commander of the Ship called the *Adventure-Galley*, and *William Moore*, deceaſed, was Gunner of the ſaid Ship; and while *Kidd* was cruiſing upon the Coaſt of *Malabar*, in the *Eaſt-Indies*, he and his ſaid Gunner had ſome Diſcourſe about taking a Ship called, *The Loyal Captain*; and, among other Things, *Kidd* ſaid to the Gunner, *How could you have put me into a Way, to take that Ship and be clear?* The Gunner anſwering, *He ſaid no ſuch Thing*, *Kidd* replied, *He was a louſy Dog:* The Gunner ſaid, *If I am ſo, you have made me ſo: You have ruined me, and a great many others.* Whereupon Captain *Kidd* ſaid, *Have I ruined you, you Dog?* and taking up a Bucket, hooped with Iron, ſtruck the Gunner with it on the right Side of his Head, and broke his Skull, and the Gunner died the next Day; which being plainly proved by ſeveral Witneſſes, the Jury found him *Guilty*. *The Court proceeded afterwards to try the*

1701. 13 W. III. *the Captain, and nine of his Crew, for Piracy, on five ſeveral Indictments. As the ſending out Captain* Kidd *on this Expedition, which was made one Ground of an Impeachment againſt ſeveral great Men in the Adminiſtration the ſame Year, I ſhall enlarge the more on theſe Trials of Captain* Kidd *and his Accomplices for Piracy, than I have done on ſome others of the like Nature.* 1701. 13 W. III.

The Trial of Captain WILLIAM KIDD, NICHOLAS CHURCHILL, JAMES HOWE, ROBERT LAMELY, WILLIAM JENKINS, GABRIEL LOFFE, HUGH PARROT, RICHARD BARLICORN, ABEL OWNES, and DARBY MULLINS, for *Piracy* at the Admiralty Seſſions, held at the *Old-Baily*, *London*, on the 8th and 9th of *May*, 1701, 13 *W.* III.

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The Indictment.

THE Indictment charges, That on the 30th of *January*, in the ninth Year of his preſent Majeſty King *William*, the Priſoners did on the High Seas, near *Cutſheen* in the *Eaſt-Indies*, piratically ſeize, and rob a certain Ship called the *Quedah Merchant*, putting the Men on Board in Fear of their Lives, and taking the ſaid Ship, with her Apparel, Tackle, and Goods, and converting them to their own Uſe; againſt the King's Peace, *&c.*

The Priſoners being arraigned on this Indictment, and ſeverally pleading Not Guilty, *Churchill*, *Howe*, and *Mullins*, afterwards repreſented to the Court, that they ſurrendred themſelves on the King's Proclamation, offering a Pardon to all that came in upon it; and deſired, they might have the Benefit of that Proclamation. ---- They added, that they had Notice of the Proclamation when they were at *Guinea* in *South America*, and delivered themſelves up to Colonel *Baſs*, Governor of *Eaſt-Jerſey*, who was then in Court, and could atteſt the Truth of it.

Then the Proclamation was read, bearing Date the 8th of *December*, 1698, whereby a Pardon was offered to all ſuch Pirates as ſhould ſurrender themſelves, within the Times therein limited, to Capt. *Thomas Warren* (Commodore of a Squadron of Men of War, then ſent to the *Eaſt-Indies* for the Suppreſſion of Pirates); and to *Iſrael Hayes*, *Peter Dellanoye*, and *Chriſtopher Pollard*, and the Survivors of them; only *Henry Avery*, alias *Bridgman*, and Captain *William Kidd*, being excepted by the ſaid Proclamation.

The Court obſerved hereupon, that the Proclamation required them to ſurrender to certain Perſons by Name; and their ſurrendring to others could not entitle them to a Pardon, ſo as to prevent their being tried.

The Evidence opened.

Then Doctor *Newton*, Advocate of the Admiralty, proceeded to open the Evidence, and obſerved, That Captain *Kidd*, who had thus acted the Pirate himſelf, went from *England* in *April* 1696, with a Commiſſion dated the 26th of *January* preceding, to take and ſeize Pirates in the *Indian* Seas, which were then very much infeſted by them: That *Kidd*'s Ship carried thirty Guns, and he had about eighty Men on board when he went from *England*; but touching at *New-York* in *July* 1696, and giving out that he was going to *Madagaſcar*, (the known Receptacle of Pirates) to free the Seas from thoſe Diſturbers of Mankind, ſo many Men came to ſerve under him that he ſoon encreaſed his Number to 155 Men; a Force ſufficient, if he had meant well, to have made him uſeful to the Publick: That calling in at ſeveral Places afterwards for Proviſions, and among others at *Madagaſcar* in *July* 97, he ſailed from thence to *Babb's-Key*, a ſmall Iſland at the Entrance of the *Red-Sea*, and a convenient Station for obſerving what Veſſels went from thence to *India*; and here, inſtead of taking Pirates, he became one himſelf; the greateſt, and the worſt of Pirates: Here he ſtaid three Weeks, in Expectation of the *Mocca* Fleet, to make his Fortune out of it: For whatever he had before pretended, this was his real Deſign; and now ſo poſſeſſed his Mind, that he could not refrain from declaring, and that often to his Men, that he ſhould make himſelf this Voyage, and ballaſt his Ship with Gold and Silver. After long Expectation, on the 14th of *Auguſt*, the Fleet, to the Number of fourteen Sail, came by; and he fell in with them, and fired ſeveral Guns at them; but finding they had an *Engliſh* and *Dutch* Convoy, his Deſign for that Time was fruſtrated.

Not diſcouraged, however, by this Diſappointment, he proceeded to the Coaſt of *Malabar*, in the *Eaſt-Indies*, where he knew the Trade was conſiderable, and expected his Advantage would be proportionable in diſturbing it: And there accordingly, for ſeveral Months together, he committed many great Piracies and Robberies, taking the Ships and Goods of the *Indians*, and others, at Sea, *Moors* and Chriſtians, and torturing cruelly their Perſons, to diſcover if any Thing had eſcaped his Hand; burning their Houſes, and killing, after a barbarous Manner, the Natives on the Shore, equally cruel, dreaded and hated both on the Land and at Sea.

Theſe Criminal Attempts and Actions had rendered his Name, (to the Diſgrace and the Prejudice of the *Engliſh* Nation) too well known, and deſervedly deteſted in thoſe remote Parts of the World; and he was now looked upon as an Arch-Pirate, and the Common Enemy of Mankind; and accordingly two *Portugueſe* Men of War went out in Purſuit of him; and one met with him, and fought him for ſeveral Hours; but *Kidd*'s Fortune then reſerved him for another Place, and another Manner of Trial.

Amongſt the great Number of Veſſels he took on that Coaſt, was the Ship he now ſtands indicted

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dicted for, the *Quedah Merchant*, being then on a Trading Voyage from *Bengal* to *Suratt*, the Commander *Engliſh* (Captain *Wright*,) the Owners *American* Merchants, and others: He had taken *Moors* before; but *Moors* and Chriſtians are all alike to Pirates; they diſtinguiſh not Nations and Religions.

Theſe on Board the Veſſel offered 30,000 *Rupees* for her Ranſom; but the Ship was too conſiderable to be parted with, even for ſo great a Sum: So *Kidd* ſold Goods out of her on the Neighbouring Coaſt, to the Value of 10 or 12,000 *l.* out of which he took whatever he could pretend to for Ammunition and Proviſions, with forty Shares for himſelf; and the Remainder was diſpoſed of amongſt the Crew, and particularly thoſe who are here indicted with him, who accompanied him; who aſſiſted him throughout in all his Piracies; and who, now too, ſhare the Spoils and the Guilt with him.

With this Ship and another, and the Remainder of the Goods not ſold on the Coaſt, he ſailed once more for *Madagaſcar*, where he arrived in the Beginning of *May* 98, and there again, what was left on Board was divided according to the ſame Proportions, and amongſt the ſame Perſons, as before; each Mariner having about three Bales to his Share.

It is not to be omitted, That at his Return to *Madagaſcar*, there came on Board him ſome Perſons from the Ship, *The Reſolution*, formerly the *Mocca Frigate*; (for the Piratical Seizing of which Veſſel there have been formerly Trials and Convictions in this Place) of which Captain *Culliford*, a notorious Pirate, now in Cuſtody, and againſt whom two Bills have been found for Piracy by the Grand Jury, was the Commander: They at firſt ſeemed to be afraid of *Kidd*; but without any Ground, as his former Actions had demonſtrated, and the Sequel ſhewed. They, who are hardened Pirates, and long inured to Villanies, could ſcarce think that any Man could ſo betray the Truſt and Confidence the Publick had placed in him, and ſaid, They heard he was come to take and hang them: But Captain *Kidd* aſſured them, That he had no ſuch Deſign; and that he had rather his Soul ſhould broil in Hell, than do them any Harm; bid them not be afraid, and ſwore he would be true to them. And here, indeed, he did not break his Word: This was his Way of being true to his Truſt, and making good the Ends of his Commiſſion, in acting with the greateſt Treachery and the greateſt Falſeneſs, that ever Man did. And to make all that has been repreſented of him true, Captain *Kidd* and Captain *Culliford* went on Board, treated, and preſented each other; and inſtead of taking *Culliford*, as it was his Duty to have done, and his Force was ſufficient to have performed it, he gave him Money and Ammunition, two great Guns and Shot, and other Neceſſaries, to fit him out to Sea, that he might be in a Condition the better to take and ſeize other innocent Perſons.

His own Ship he now left, and went on Board the *Quedah-Merchant*; ſeveral of his Men then went from him; but not the Priſoners; they were all along Well-wiſhers and Aſſiſtants to him; fought for him, divided the Plunder with him, and are now come to be tried with him.

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This, Gentlemen, is the Crime he is indicted for, Piracy; the growing Trouble, Diſturbance, and Miſchief of the Trading World, and the peaceable Part of Mankind; the Scandal and Reproach of the *European Nations*, and the Chriſtian Name, (I wiſh I could not ſay, that the *Kidds* and the *Averys* had not made it more particularly ſo of the *Engliſh*) amongſt *Mahometans* and *Pagans*, in the extremeſt Parts of the Earth; which turns not only to the Diſadvantage of the immediate Sufferers, but of all ſuch as traffick in thoſe Countries, whether Companies or ſingle Merchants, who are to ſuffer for the Misfortunes of others, with whom, it may be, they have no Dealings; and for the Villanies of ſuch whom they and all Mankind equally and juſtly deteſt and abhor.

This is the Perſon that ſtands indicted at that Bar, than whom no one in this Age has done more Miſchief, in this worſt Kind of Miſchief; or has occaſioned greater Confuſion and Diſorder, attended with all the Circumſtances of Cruelty and Falſhood, and a Complication of all Manner of Ill.

If, therefore, theſe Facts ſhall be proved upon him, you will then, Gentlemen, in finding him Guilty, do Juſtice to the injured World; the *Engliſh* Nation (our Common Country) whoſe Intereſt and Welfare ſo much depend on the Encreaſe and Security of Trade; and, laſtly, to yourſelves, whom the Law has made Judges of the Fact.

The Evidence.

The King's Witneſſes being called, *Robert Braddenham*, the Surgeon on Board *Kidd*'s Ship, was ſworn, and depoſed, That they ſet ſail from *Plymouth* in the *Adventure-Galley*, the Beginning of *May*, 1696, having about eighty Men on Board, and thirty Guns; and in their Way to *New-York* they took a *French* Bark: That having encreaſed their Number of Men to 155, they ſailed from *New-York* to *Madagaſcar*, and from thence to *Babb's-Key*, an Iſland on the Mouth of the *Red-Sea*, where they waited a Fortnight, or three Weeks, for the *Mocca* Fleet, and attacked them as they came by; but finding they were under an *Engliſh* and *Dutch* Convoy, he left them, and ſailed towards the Coaſt of *Malabar*; and meeting with a *Mooriſh* Ship, commanded by Captain *Parker*, in his Way thither, he took the Captain for his Pilot, and a *Portugueſe* out of the ſame Ship for his Interpreter, with ſome Gold and Merchandiſe, and drubbed the Mariners with naked Cutlaſhes, to make them confeſs where their Money was.----That the *Engliſh* Factory ſending to demand Captain *Parker*, and the Interpreter, he kept them in the Hold, and denied he had any ſuch Perſons on Board: That he afterwards met with a *Portugueſe* Man of War, and fought him three or four Hours, and then they parted: After which they went on Shore on ſome *Malabar* Iſlands, for Wood and Water, where they burnt ſeveral Houſes, and plundered the People; and *Kidd* ordered one of the Natives to be tied to a Tree and ſhot, becauſe they had cut his Cooper's Throat; That *Kidd* afterwards took a *Mooriſh* Ship, which they carried to *Madagaſcar*, and took

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several Sorts of Goods out of a *Mooriſh* Ketch and then turned her a Driſt: And that he alſo took ſeveral Cheſts of Opium, and *Eaſt-India* Goods out of a *Portugueſe* Ship. Then he proceeded to give a more particular Account of the ſeiſing of the *Quedah Merchant*, the Ship mentioned in the Indictment. He teſtified, That in the Month of *January*, 1697-8, Captain *Kidd* put up *French* Colours, and gave Chaſe to the ſaid Ship; and coming up with her, commanded the Maſter (one *Wright*, an *Engliſhman*) to come on board; and told him, he was his Priſoner: Then he commanded his Men to go on board the *Quedah Merchant*, and take Poſſeſſion of her; and he ſold and diſpoſed of as many of the Goods belonging to the ſaid Ship on the *Malabar* Coaſt, as amounted to ſeven or eight thouſand Pounds: That, beſides Captain *Wright*, there were on Board the *Quedah Merchant*, two *Dutchmen*, a *Frenchman*, ſome *Armenians*, and *Moors (Indian-Mahometans)*: And that the *Armenians*, to whom the Ship and Cargo belonged, offered *Kidd* twenty thouſand Rupees (Half-Crowns) for the Ranſom of the Ship and Goods; but *Kidd* ſaid, they were worth a great deal more, and carried them to *Madagaſcar*, where the Goods were ſhared among the Men; Captain *Kidd* reſerving forty Shares to himſelf.

That at *Madagaſcar* ſome *Engliſhmen*, who were formerly acquainted with *Kidd*, came to him from *Culliford* the Pirate, and ſaid, they heard he was come thither to take and hang them; but *Kidd* anſwered, He was as bad as they; went on Board *Culliford* in the *Mocca* Frigate, and ſwore to be true to thoſe Pirates, and aſſiſt them; and furniſhed them with Guns, and an Anchor to fit them out to Sea.---That the *Adventure-Galley* being leaky, *Kidd* left her at *Madagaſcar*, and went on Board the *Quedah Merchant*, in which Ship he ſailed afterwards.

Joſeph Palmer being ſworn, confirmed the Surgeon's Evidence, as to *Kidd*'s ſailing from *Plymouth* to *New-York*, and from thence to *Madagaſcar*, and *Babb*'s-*Key*, at the Entrance of the *Red-Sea*, where he attacked the *Mocca* Fleet; and of his ſailing afterwards to the *Malabar* Coaſt, and taking ſeveral Prizes there, particularly the *Quedah Merchant*, and ſelling Part of her Cargo to the *Banians* on the *Malabar* Coaſt, and ſharing the Money, and the reſt of the Goods, with his Men, at *Madagaſcar*, whether they carried that Ship, and entered into a friendly Correſpondence with Captain *Culliford*, the Pirate, who commanded the *Mocca* Frigate.

Kidd's Defence.

Then Captain *Kidd* being ordered to enter upon his Defence, ſaid, He had a Commiſſion to take *French* Ships, and another to take Pirates; and that two of the Ships he took had *French* Paſſes; and that he called his Men upon Deck, to conſult what was to be done with them, appealing to *Palmer*, the laſt Witneſs, If he would not have given theſe Ships to the Owners again, if his Men had not all been againſt it? *Palmer* anſwered, That the *Armenian* (who was in Court) offered twenty thouſand Rupees for the Ship, and he refuſed it: But the *Armenians* crying and wringing their Hands, the Captain ſaid, Theſe *Armenians* make ſuch a Noiſe for the Ship, I muſt ſay my Men will not part with her, though there were not a Quarter of the Men concerned in it.

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Then both Captain *Kidd*'s Commiſſions were read, at his Requeſt: By the firſt of which he was authoriſed to cruiſe upon the *French*, and make Repriſals for the Damages they had done the King's Subjects in the Ship called the *Adventure Galley*: Which Commiſſion was dated the 11th of *December*, 1694.

By the ſecond Commiſſion, he was impowered to cruiſe in the *Adventure Galley*, againſt the Pirates in the *Indies*; and this Commiſſion is dated on the 26th of *January*, 1695-6.

The Court demanding, how he could excuſe himſelf by Virtue of theſe Commiſſions, Captain *Kidd* anſwered, The Commander of the *Quedah Merchant* had a *French* Commiſſion; and appealed to *Palmer*, the Witneſs, for the Truth of it; but *Palmer* anſwered, he never ſaw it: And the Court told him, he ſhould have got the Ship condemned, if ſhe had been *French*.

Then Captain *Kidd* called one *Davis* as a Witneſs for him, who teſtified, That Captain *Kidd* being at *Amboyna*, in the *Eaſt-Indies*, produced two Paſſes, which he ſaid were *French* Paſſes; but he (the Witneſs) could not tell whether they had any Relation to the *Quedah Merchant* that was taken.

Captain *Kidd* alſo appealed to *Bradenham*, the Witneſs, if he did not ſee the *French* Paſſes; but he anſwered, he only heard he had *French* Paſſes.

Mr. *Say* being called as a Witneſs for *Kidd*, ſaid, He heard *Bradenham* the Surgeon ſay, he had been with Captain *Kidd* at *Madagaſcar*, and he believed he had done nothing but what he could anſwer.

Captain *Humphreys* and Captain *Bond* being called to *Kidd*'s Reputation, ſaid, He had done good Service, and acted with great Applauſe in the *Weſt-Indies*, in the Beginning of the laſt War: To which the Court anſwered, There was no doubt but the Miniſtry had a good Opinion of him in the Year 1695, when they procured him thoſe Commiſſions; but he was not then turned Pirate.

The Defence of the other Priſoners.

The reſt of the Priſoners being asked, What they had to ſay in their Defence? *Robert Lamley* anſwered, he was Servant to Mr. *Owens*; and *Jenkins* ſaid, he was Servant to *Buller*: *Loffe* ſaid, he went to ſerve his Majeſty, whoſe Commiſſion Captain *Kidd* had: The Court anſwered, he had Part of the Money and Goods that were taken, and he muſt believe, when *Kidd* did thoſe extravagant Things, he did not act according to his Commiſſion.

Parrot alſo ſaid, He came on Board Captain *Kidd* at *Madagaſcar*, underſtanding he had the King's Commiſſion; and being told, he could not imagine he was acting according to his Commiſſion when he did theſe Things, he anſwered, he thought he was ſafe where the King's Commiſſion was.

Barlicorn ſaid in his Defence, That he was Servant to Captain *Kidd*: *Abel Owens* ſaid, he ſurrendered to a Juſtice of Peace in *Southwark* on his Majeſty's Proclamation; but was told that a Juſtice of Peace was not within the Proclamation, though that might recommend him to the King's Mercy.

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Darby Mullins ſaid, He came in upon the King's Proclamation; and being told he had his Dividend of the Money and Goods, he anſwered, *Kidd* gave it him, and afterwards took it from him.

The Lord Chief Baron's Directions to the Jury.

Then the Lord Chief Baron proceeded to direct the Jury, and ſaid: The Priſoners at the Bar, in Number ten, all ſtand indicted for Piracy, in felonioufly and piratically Seizing and Taking the Ship, called the *Quedah Merchant* with the Apparel and Tackling thereof, to the Value of 400 *l.* and divers Goods mentioned in the Indictment, to the Value of 4,500 *l.* from the Mariners of the ſaid Ship, belonging to ſeveral Perſons unknown, *(and having repeated the Evidence, the Chief Baron goes on, and ſays;*

Now, Gentlemen, this muſt be obſerved: If this was a Capture on the High Seas, and theſe were the Goods of Perſons in Amity with the King, and had no *French* Paſs, then it is plain Piracy: And, if you believe the Witneſſes, here is a Taking of the Goods and Ship of Perſons in Amity, and converting them to their own Uſe: Such a Taking at Land as this would be Felony; and being at Sea, it will be Piracy: For this is a taking the Ship from the right Owners, and turning it to their own Uſe. So that you have Evidence as to the Seizing of the Ship, and dividing the Money riſing from the Goods ſold, and ſharing the Remainder, according to the Articles.

Now, what does Captain *Kidd* ſay to all this? He has told you, he acted purſuant to his Commiſſion; but that cannot be, unleſs he gives you Satisfaction that the Ship and Goods belonged to the *French* King, or his Subjects, or that the Ship had a *French* Paſs, otherwiſe neither of them will excuſe him from being a Pirate: For if he takes the Goods of Friends, he is a Pirate; he had no Authority for that: There is no Colour from either of his Commiſſions for him to take them. And as to the *French* Paſſes, there is nothing of that appears by any Proof; and, for ought I can ſee, none ſaw them but himſelf, if there were ever any. It is proved that the People that were Owners of the Goods, made him very large Offers to redeem the Ship, (20,000 Rupees, as I remember) but he would not accept their Propoſal; but ſaid, That is a ſmall Sum, the Cargo is worth a great deal more, or to that Effect: And further ſaid, he muſt anſwer theſe People, that his Men will not part with it. And a *Frenchman* was to be ſet up for a Mock-Buſineſs, as you have heard; and if the Witneſſes ſay true, they were ſaid by the Captain of the Ship to be, and were reputed to be, the Ship and Goods of Friends, and not of Enemies; and if they were ſo, and had no *French* Paſs, then is he, and thoſe that were concerned with him, guilty of Piratically taking this Ship, and of Piratically ſeizing the Goods in the Ship; and neither of his Commiſſions will juſtify ſuch an Action as this. If he had acted purſuant to his Commiſſion, he ought to have condemned the Ship and Goods, if they were in a *French* Intereſt, or ſailed under a *French* Paſs; but by his not condemning them, he ſeems to ſhew his Aim, Mind, and Intention, that he did not act in that Caſe by Virtue of his Commiſſion, but quite contrary to it; for he takes the Ship, and ſhares the Money and Goods, and is taken in that very Ship by my Lord *Bellamont*, and he had continued in that Ship till that Time; ſo that there is no Colour or Pretence appears, that he intended to bring this Ship to *England*, to be condemned, or to have condemned it in any of the *Engliſh* Plantations, having diſpoſed of the whole Cargo, as aforeſaid. Here I muſt leave it to you to conſider whether, according to the Evidence that appears, there is any Ground for him to ſay, he has acted by his Commiſſion in taking the *Quedah Merchant*, and Goods in her, or whether he has not acted contrary thereunto.

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Now for himſelf, he has called ſome Perſons here, to give an Account of his Reputation, and of his Services done in the *Weſt-Indies*; and one of them ſays, about ten or twelve Years ago he did good Service there. Why ſo he might, and might have, and it is very like he had ſuch a Reputation, when the King truſted him with theſe Commiſſions, elſe I believe he had, never had them; ſo that, whatever he might be ſo many Years ago, that is not a Matter to be inſiſted on now, but what he hath been ſince, and how he hath acted in this Matter charged againſt him: So that, Gentlemen, as to Mr. *Kidd*, I muſt leave it to you, whether he is guilty of Piracy or no; and if you believe him guilty upon the Evidence, you will find him ſo; if not, you will acquit him.

Now for the other Priſoners, it is proved they were all concerned in Taking and Sharing the Ship and Goods in the Indictment; yet their Circumſtances differ pretty much among themſelves. There are three of them that it has been made out to you, and owned by the King's Witneſſes, that they were Servants; *Robert Lamley*, *William Jenkins*, *Richard Barlicorn*. All theſe are made out to be Servants, and you have had the Indentures of two of them produced, and the King's Witneſſes prove them ſo, and they were admitted to be Servants. Now Gentlemen, there muſt go an Intention of the Mind, and the Freedom of the Will, to the committing a Felony or Piracy. A Pirate is not to be underſtood to be under Conſtraint, but a free Agent; for in this Caſe the bare Act will not make him guilty, unleſs the Will make it ſo. Now, a Servant, it is true, if he go voluntarily, and have his Proportion, he muſt be accounted a Pirate; for then he acts upon his own Account, and not by Compulſion. And theſe Perſons, according to the Evidence, received their Part; but, whether they accounted to their Maſters for their Shares afterwards, yea or no, as they pretend, but make no Proof of it, I muſt leave that to you; and therefore there is a Conſideration to be had of them. For, if theſe Men did go under the Compulſion of their Maſters, to whom they were Servants, and not voluntarily, and upon their own Accounts, it may difference their Caſe from others, who went and acted willingly in this Matter, and upon their own Accounts. So that, as to thoſe that were Servants under the Command of their Maſters that were preſent with them, I muſt leave it to you, whether you will diſtinguiſh between them and the others, that were not Servants,

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but free Agents. It is true, a Servant is not bound to obey his Maſter but in lawful things, which they ſay they thought this was; and that they knew not to the contrary, but that their Maſters acted according to the King's Commiſſion; and therefore, their Caſe muſt be left to your Conſideration, whether you think them, upon the whole Matter, guilty or no. If you believe them guilty, you will find them ſo, otherwiſe you will acquit them.

For the other Perſons, ſome of them pretend they came in on his Majeſty's Proclamation, and for that you muſt conſider the Evidence, and take it altogether; and conſider whether you are ſatisfied, by what they have ſaid or proved, that they have brought themſelves within the Benefit of the King's Favour by that Proclamation. You have heard it read, and obſerved the Qualifications and Directions by it, and the Terms upon which the Pardon was promiſed, which are not made out to you, to be complied with by them. They may apply another Way for the King's Mercy; this Court muſt proceed according to the Rules of Law and Juſtice. But then all of them inſiſt on this; We were, ſay they under the Captain, and acted under him as our Commander; and, Gentlemen, ſo far as they acted under his lawful Commands, and by Virtue and in Purſuance of his Commiſſions, it muſt be admitted they were juſtifiable, and ought to be juſtified: But how far forth that hath been, the Actions of the Captain, and their own, will beſt make it appear. It is not conteſted, but theſe Men knew, and were ſenſible of what was done and acted, and did take Part in it, and had the Benefit of what was taken, ſhared amongſt them: And if the taking of this Ship and Goods were unlawful, then theſe Men can claim no Advantage by theſe Commiſſions, becauſe they had no Authority by them to do what they did, but acted quite contrary to them: What had they to do to enter into ſuch Articles and to act as they did? You muſt conſider the Evidence given here according to the Rules of the Law, and if you are ſatisfied, that they have knowingly and wilfully been concerned or partaken with Captain *Kidd*, in taking this Ship, and divided the Goods, and that piratically and felonioufly, then they will be guilty within this Indictment. It is worthy of Conſideration, what appears upon the Evidence, that they met with one reputed to be a notorious Pirate, called *Culliford*; he was eſteemed an Arch-Pirate, and known to be ſo; yet this Captain, *Kidd*, that was commiſſioned to take Pirates, inſtead of taking him, grows to ſuch an Intimacy with him, that he ſaid he would have his Soul fry in Hell before he would hurt him, or to that Effect; and ſo they made Preſents one to another, and Captain *Kidd* left three of his Men with him. Whilſt Men purſue their Commiſſions, they muſt be juſtfied, but when they do Things not authorized, or never acted by them, it is as if there had been no Commiſſion at all. I have diſtinguiſhed the Evidence as well as my Memory ſerves me, and muſt leave it to you to determine, upon the whole Matter, who are guilty, and who not; and ſuch as you are ſatisfied to be guilty, you will find ſo, and ſuch as you are not ſatisfied to be guilty, you will acquit.

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Then the Jury withdrew, and, after half an Hour's Receſs, brought in the following Verdict, *(viz.)*

Three acquitted. That *Lamley*, *Jenkins*, and *Barlicorn*, the three Servants, were *Not Guilty*; and that Captain *Kidd*, and the other ſix were all *Guilty*.

Seven convicted. Second Indictment. Then all the ten were arraigned on four other Indictments; the firſt of which charged them with piratically ſeizing and robbing a *Mooriſh* Ship, on the 20th of *September*, in the ninth Year of the King, on the High-Sea, about fifty Leagues from *Carwar* in the *Eaſt-Indies*.

Third Indictment. 3. The third Indictment charged them with piratically taking another *Mooriſh* Ship on the 27th of *November*, near *Callicut* in the *Eaſt-Indies*.

Fourth Indictment. 4. The Fourth charges them with taking a *Mooriſh* Ketch near *Callicut*, on the 28th of *December*; and

Fifth Indictment. 5. The Fifth charges them with taking a *Portugueſe* Ship, near *Callicut*, on the 20th of *January*, in the ſame ninth Year of the King.

The ſame Evidence on theſe four Indictments. The Witneſſes were the ſame, at the Trials on theſe Indictments, as they were at the former, and gave much the ſame Evidence: And as the Priſoners were convicted already, and had little more to ſay in their Defence of theſe Facts, than they had inſiſted on before, it is perfectly unneceſſary to go over the Evidence again: I ſhall only obſerve, therefore,

Three acquitted, and ſeven covicted. That *Lamley*, *Jenkins*, and *Barlicorn*, the three Servants, were acquitted, and all the reſt were convicted on two of the Indictments; and that on the fourth and fifth Indictments, *Churchill*, *How*, and *Owens* pleaded Guilty; And *Kidd*; *Loffe*, *Parrot*, and *Mullins* were found Guilty by the Jury upon the two laſt Indictments.

William Kidd, *Nicholas Churchill*, *James How*, *Gabriel Loffe*, *Hugh Parrot*, *Abel Owens*, and *Darby Mullins*; together with *Robert Hickman* and *John Eldridge*, who had been convicted of Piracy alſo, were afterwards called to Judgment, and Doctor *Oxenden* paſſed the following upon them, *(viz.)*

Sentence paſſed on ſeven. *You ſhall be taken from the Place where you are, and be carried to the Place from whence you came, and from thence to the Place of Execution, and there be ſeverally hanged by your Neck until you be dead.*

Four of the Pirates executed. Whereupon *William Kidd*, and three of his Accomplices, who had not come in upon the Proclamation, were hanged at *Execution Dock*, and their Bodies left hanging upon Gibbets by the *Thames* Side, for a Terror to others.

Remarks on Kidd's Trial. A certain *Indian* Prince, of the Great Mogul's Family, having been taken by *European* Pirates in the *Indian* Seas, as he was going on a Pilgrimage from *India* to *Mecca*, the *Eaſt-India* Company's Factors at *Suratt* were thereupon laid in Irons, and threatened to be ſeverely dealt with: But upon repreſenting that theſe People were Robbers, alike Enemies

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Enemies to them and to all Mankind; and applying to the Mogul's Officers, in ſuch a Manner as ſeldom fails to mollify Courtiers of any Religion or Nation, the Company's Factors obtained their Liberty: However, apprehending they ſhould be liable to the like Inſults again, if the *Engliſh* Pirates in thoſe Seas were not ſuppreſſed; they deſired the Company to procure a Man of War to be ſent thither for the Protection of the Merchants on that Side, and to deſtroy a Neſt of Pirates, that lay in ſome obſcure Creeks in *Madagaſcar*; and upon the Company's petitioning the Government for a Man of War, it was granted, and Captain *Kidd* pitched upon for that Service.

This was looked upon to be ſo gainful an Expedition, that ſome of the Miniſtry engaged in it; as the Lord *Somers*, the Earl of *Romney*, the Earl of *Orford*, the Lord *Bellamont*, and other Perſons of Diſtinction, who laid down large Sums to fit out the Ship, and procured a Grant from the Crown, of all that *Kidd* ſhould take; who afterwards turning Pirate, their Enemies ſuggeſted, that he had ſecret Orders from thoſe great Men, who employed him for what he did, and was aſſured of Protection from them: Others ſaid, it was not becoming Miniſters of State, to engage in ſuch Enterprizes; and hardly legal, to get a Grant of Spoils that ſhould be taken on the High Seas, before they were condemned as lawful Prize; concluding that theſe Noblemen would never have engaged in ſuch an Enterprize, if there had not been ſome extraordinary gains in View more than could have been got, by taking a Pirate Ship or two: That as *Kidd* was bound to the *Indian* Seas, he had probably his Eye on the rich Ships which trade between *Perſia* and *India*, when he ſet Sail; and had given his Employers Expectations of bringing Home an immenſe Treaſure. 1701. 13 W. III.

But whatever *Kidd* pretended, or theſe Noble Adventurers expected; certain it is, he made Prizes of ſeveral Merchant Ships in the *Indian* Seas, and divided the Spoils with his Crew, and returning afterwards to *New England*, was taken there by the Lord *Bellamont*, the Governor, and ſent to *England*, where he was condemned and executed for Murder and Piracy; while his Employers were ſeverely reflected on, and their Encouragement of him made the Occaſion (among other Things) of impeaching two of the ſaid Lords, (*viz.*) the Lord *Somers* and the Earl of *Orford*, as will appear by the following Proceedings.

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Proceedings on the Impeachment of WILLIAM Earl of *Portland*, JOHN Lord *Somers*, EDWARD Earl of *Orford*, and CHARLES Lord *Halifax*, in the Year 1701.

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The four impeached Lords.

The Occaſion of impeaching them.

A Treaty of Partition of the *Spaniſh* Monarchy having been concluded on the 15th of *March* 1700, N. S. 4. O. S. between *Great Britain* and *Holland* on the one Part, and *France* on the other; whereby the Kingdom of *Naples* and *Sicily*, and the reſt of the *Spaniſh* Territories on the Coaſt of *Italy*, together with the Province of *Guipuſcoa* and the Dutchy of *Lorrain*, were allotted to *France* on the Death of the then King of *Spain*:

The Commons took the ſaid Treaty into their Conſideration in *March* following, and preſented an Addreſs to his Majeſty; wherein they repreſent the ill Conſequences of that Treaty of Partition, whereby ſuch large Territories of the King of *Spain*'s Dominions were to be delivered up to the *French* King.

The Houſe of Peers alſo preſented an Addreſs to the King on the 20th of *March*, 1700-1, wherein they tell him, That they found to their great Sorrow, that this Treaty would be of very ill Conſequence to the Peace and Safety of *Europe*; for that beſides the Occaſion it might have given the late King of *Spain*, (who died juſt before) to have made his Will in Favour of the Duke of *Anjou*, if that Treaty had taken Effect; the Prejudice to his Majeſty and his Subjects, and indeed to all *Europe*, by the Addition of *Sicily*, *Naples*, *Guipuſcoa*, and *Lorrain* to *France*, had not only been very great, but contrary to the Pretence of the Treaty itſelf; which was to prevent any Umbrage, that might have been taken by uniting ſo many States and Dominions under one Head: That by all the Informations they had had of this fatal Treaty, they could not find that the verbal Orders or Inſtructions, (if any were given to his Majeſty's Plenipotentiaries) were ever conſidered in any of his Majeſty's Councils; or, that the Draught of that Treaty had ever been laid before his Majeſty at any Meeting of his Council; much leſs that it was adviſed or approved of by any Council or Committee of Council: Wherefore they thought themſelves bound in Duty, to his Majeſty, and Juſtice to their Country moſt humbly to beſeech him, that for the future, he would be pleaſed to require and admit, in all Matters of Importance, the Advice of his natural born Subjects, whoſe known Probity and Fortunes might make him and his People a juſt Aſſurance of their Fidelity to his Service; and that in order thereunto he would be pleaſed to conſtitute a Council of ſuch Perſons, to whom his Majeſty might be pleaſed to impart all Affairs both at Home and Abroad, which might any Way concern him and his Dominions: For as intereſt and natural Affection to their Country, would incline them to wiſh the Welfare and Proſperity of it, much more than others, who had no ſuch Ties upon them; and as their Experience and Knowledge of their Country would alſo render them more capable than Strangers, of adviſing his Majeſty in the true Intereſt of it; ſo they were confident, that after ſuch large and repeated Demonſtrations of his Subjects Duty and Affection, his Majeſty could not doubt of their Zeal in his Service, not want the Knowledge

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ledge of Perſons fit to be employed in all his moſt ſecret and arduous Affairs: And ſince it appeared the *French* King's accepting of the King of *Spain*'s Will, was a manifeſt Violation of that Treaty, they humbly adviſed his Majeſty, in future Treaties with that Prince, to proceed with ſuch Caution as might carry a real Security.

The Earl of Portland *charged with negotiating the Partition Treaty.*

Some few Days after the Earl of *Portland* was charged directly in the Houſe of Peers with negotiating the ſaid Treaty: To which his Lordſhip ſaid, by Way of Apology for himſelf, That the Earls of *Pembroke*, *Jerſey*, and *Marlborough*, and the Lords *Somers*, *Lonſdale*, and *Halifax* were privy to that Negociation; and their Lordſhips did acknowledge they had ſeen a Draught of the ſaid Treaty; but ſaid, the Earl of *Portland* drew it up himſelf in *French*, and they had neither given or refuſed their Aſſent to it, for it was never communicated to the Privy Council.

The Commons alſo, in their Debates on this Treaty, reflected ſeverely on the huddling it up in the Dark; and Mr. *Howe* particularly ſaid, *That the Partition Treaty was a Felonious Treaty*; comparing it to the Diſtribution of other Men's Effects among Robbers and Highwaymen. And on the Firſt of *April*, 1701, the Houſe of Commons came to this Reſolution, That *William* Earl of *Portland*, by negociating and concluding the Treaty of Partition, which was deſtructive to the Trade of this Kingdom, and dangerous to the Peace of *Europe*, was guilty of High Crimes and Miſdemeanors, and ſhould be impeached thereupon: And Sir *John Leveſon Gower*, by Order of the Houſe, immediately went up to the Lord's Bar, and impeached the ſaid Earl; acquainting their Lordſhips, that the Commons would in due Time exhibit Articles againſt him.

Earl of Portland *impeached.*

The Commons afterwards being upon a Debate on the 14th of *April*, whether they ſhould impeach the Lord *Somers* for adviſing the ſaid Treaty of Partition; his Lordſhip deſired he might be heard, before the Houſe came to any Reſolution thereupon; and being admitted into the Houſe, he made an Apology for his Conduct in that Affair, containing much the ſame Matter contained in his Anſwer, (hereafter mentioned): But he being withdrawn, the Commons Reſolved, That *John* Lord *Somers*, by adviſing his Majeſty to conſent to the Treaty for the Partition of the *Spaniſh* Monarchy, whereby large Territories of the King of *Spain*'s Dominions were to be delivered up to *France*, was guilty of a High Crime and Miſdemeanor: And Mr. *Harcourt*, by Command of the Houſe, impeached Lord *Somers* at the Bar of the Houſe of Lords; declaring, that the Commons would, in due Time, exhibit Articles againſt him.

Lord Somers *impeached.*

Two Letters produced by Lord Somers, *in Defence of his Conduct.*

The Lord *Somers*, at his Hearing before the Commons, delivered in the two following Letters, as a Juſtification of his Conduct.

The King's Letter to Lord Somers, *concerning the Partition Treaty, dated at* Loo, 15--25 Auguſt, 1698.

The King's Letter to him.

" I Imparted to you, before I left *England*, " that in *France* there was expreſſed to my " Lord *Portland*, ſome Inclination to come " to an Agreement with us, concerning the " Succeſſion of the King of *Spain*; ſince " which Count *Tallard* has mentioned it to " me, and has made Propoſitions, the Parti- " culars of which my Lord *Portland* will " write to *Vernon*; to whom I have given " Orders not to communicate them to any " other beſides yourſelf, and to leave to your " Judgment to whom elſe you would think " proper to impart them; to the End I might " know your Opinion upon ſo important an " Affair, and which requires the greateſt Se- " crecy. If it be fit this Negociation ſhould " be carried on, there is no Time to be loſt; " and you will ſend me the full Powers under " the Great Seal, with the Names in Blank, " to treat with Count *Tallard*. I believe, " that this may be done ſecretly, that none " but you and *Vernon*, and thoſe to whom " you ſhall have communicated it, may have " Knowledge of it; ſo that the Clerks, who " are to write the Warrant and the full Pow- " ers, may not know what it is. According " to all Intelligence, the King of *Spain* can- " not out-live the Month of *October*, and the " leaſt Accident may carry him off every Day. " I received yeſterday, your Letter of the " Ninth: Since my Lord *Wharton* cannot at " this Time leave *England*, I muſt think of " ſome other to ſend Ambaſſador into *Spain*; " if you can think of any one proper, let me " know it, and be always aſſured of my " Friendſhip.

William Rex.

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Tunbridge-Wells, 28*th of* Auguſt, 1698. O.S.

Lord Somers's *Anſwer to the King.*

Sir,

" HAVING your Majeſty's Commiſſion " to try if the Waters would contribute " to the Re-eſtabliſhment of my Health, I " was juſt got to this Place, when I had the " Honour of your Commands; I thought the " beſt Way of executing them would be to " communicate to my Lord *Orford*, Mr. " *Montague*, and the Duke of *Shrewsbury*, " (who, before I left *London*, had agreed up- " on a Meeting about that Time) the Subject " of my Lord *Portland*'s Letter; and at the " ſame Time letting them know, how ſtrictly " your Majeſty required that it ſhould remain " an abſolute Secret.

" Since that Time, Mr. *Montague*, and " Mr. Secretary are come down hither; and " upon the whole Diſcourſe, three Things " have principally occurred to be humbly ſug- " geſted to your Majeſty.

" Firſt, That the entertaining a Propoſal of " this Nature ſeems to be attended with very " many ill Conſequences, if the *French* did " not act a ſincere Part; but we were ſoon " at Eaſe as to any Apprehenſions of this " Sort, being fully aſſured your Majeſty " would not act but with the utmoſt Nicety, " in an Affair wherein the Glory and Safety " of *Europe* were ſo highly concerned.

" The ſecond Thing conſidered, was, The " very ill Proſpect of what was like to hap- " pen upon the Death of the King of *Spain*, " in Caſe nothing was done previouſly, to- " wards

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" wards the providing againſt that Accident, " which ſeemed probably to be very near; " the King of *France* having ſo great a Force, " in ſuch a Readineſs, that he was in a Con- " dition to take Poſſeſſion of *Spain*, before " any other Prince could be able to make a " Stand: Your Majeſty is the beſt Judge, " whether this be the Caſe, who are ſo per- " fectly informed of the Circumſtances of " Parts abroad.

" But ſo far as relates to *England*, it would " be want of Duty not to give your Majeſty " this clear Account, That there is a Dead- " neſs and Want of Spirit in the Nation uni- " verſally, ſo as not at all to be diſpoſed to " the Thought of entering into a new War; " that they ſeemed to be tired out with Taxes, " to a Degree beyond what was diſcerned, " till it appeared upon the Occaſion of the " late Elections. This is the Truth of the Fact, " upon which your Majeſty will determine " what Reſolutions are proper to be taken.

" That which remained, was the Conſide- " ration, What would be the Condition of " *Europe*, if the Propoſal took Place: Of " this we thought ourſelves little capable of " judging; but it ſeemed that, if *Sicily* was " in the *French* Hands, they will be entirely " Maſters of the *Levant* Trade: That if they " were poſſeſſed of *Final*, and thoſe other Sea- " Ports on that Side, whereby *Milan* would " be entirely ſhut out from Relief, by Sea, " or any other Commerce, that Dutchy would " be of little Signification in the Hands of " any Prince: And that if the King of *France* " had Poſſeſſion of that Part of *Guipuſcoa*, " which is mentioned in the Propoſal, beſides " the Ports he would have in the Ocean, it " does ſeem he would have as eaſy a Way of " invading *Spain* on that Side, as he now has " on the Side of *Catalonia*.

" But it is not to be hoped, that *France* " will quit its Pretences to ſo great a Succeſſi- " on without conſiderable Advantages; and " we are all aſſured your Majeſty will reduce " the Terms as low as can be done, and make " them, as far as is poſſible in the preſent Cir- " cumſtances of Things, ſuch as may be ſome " Foundation for the future Quiet of *Chri- " ſtendom*, which all your Subjects cannot but " be convinced is your true Aim. If it could " be brought to paſs, that *England* might be " ſome Way a Gainer by this Tranſaction, " whether it were by the Elector of *Bavaria* " (who is the Gainer by your Majeſty's Inter- " poſition in this Treaty) his coming to an " Agreement to let us into ſome Trade to the " *Spaniſh* Plantations, or in any other Man- " ner, it would wonderfully endear your " Majeſty to your *Engliſh* Subjects.

" It does not appear, in Caſe this Negoci- " ation ſhould proceed, what is to be done on " your Part, in order to make it take Place; " whether any more be required, than that " the *Engliſh* and *Dutch* ſhould ſit ſtill, and " *France* itſelf ſee it executed: If it be ſo, " what Security ought to be expected, that " if, by our being Neuters, the *French* be " ſucceſsful, they will confine themſelves to " the Terms of the Treaty, and not attempt " to make further Advantages of their Suc- " ceſs.

" I humbly beg your Majeſty's Pardon, that " theſe Thoughts are ſo ill put together; theſe " Waters are known to diſcompoſe and di- " ſturb the Head, ſo as almoſt totally to diſ- " able one from writing: I ſhould be extreme- " ly troubled if my Abſence from *London* has " delayed the Diſpatch of the Commiſſion one " Day: You will be pleaſed to obſerve, that " two Perſons (as the Commiſſion is drawn) " muſt be named in it; but the Powers may " be executed by either of them: I ſuppoſe " your Majeſty will not think it proper to " name Commiſſioners that are not *Engliſh*, " or Naturalized, in an Affair of this Nature.

" I pray God give your Majeſty Honour " and Succeſs in all your Undertakings." I am, with the utmoſt Duty and Reſpect,

Sir, *Your Majeſty's moſt Dutiful, and moſt Obedient Subject and Servant,*

SOMERS.

" *P. S.* The Commiſſion is wrote by " Mr. Secretary, and I have had it ſealed in " ſuch a Manner, that no Creature has the " leaſt Knowledge of it, beſides the Perſons " named.

Lords Orford and Halifax impeached.

The Commons alſo, on the ſame 15th of *April*, impeached *Edward* Earl of *Orford*, and *Charles* Lord *Halifax*, of High Crimes and Miſdemeanors, ſeparately; Colonel *Byerley* carrying up the former Impeachment, and Mr. *Bridges* the latter.

An Addreſs of the Commons to remove theſe four Lords.

And they afterwards Reſolved on an Addreſs to his Majeſty, in which they declared the great Satisfaction they had received in their examining the Treaty of Partition; obſerving his Majeſty's Care in not entering on that Negociation without the Advice of his *Engliſh* Counſellors; and finding that *John* Lord *Somers*, on whoſe Judgment his Majeſty chiefly relied in that important Affair, did, in Concert, with *Edward* Earl of *Orford* and *Charles* Lord *Halifax*, adviſe his Majeſty to enter into that Treaty, of ſuch dangerous Conſequence, without the Advice of his Council: That they might no longer be able to deceive his Majeſty, and abuſe his People, they deſired he would be pleaſed to remove the ſaid *John* Lord *Somers*, *Edward* Earl of *Orford*, and *Charles* Lord *Halifax* from his Council and Preſence for ever; as alſo *William* Earl of *Portland*, who tranſacted thoſe Treaties; and concluded with repeating their Aſſurances to ſtand by and ſupport his Majeſty, to the utmoſt of their Power.

To which his Majeſty anſwered, He ſhould employ none in his Service, but ſuch as were likely to improve that mutual Truſt and Confidence between them, which was ſo neceſſary at that Conjuncture for their own Security, and the Preſervation of their Allies.

An Addreſs of the Lords to the contrary.

On the contrary, the Houſe of Lords, (in which the Courtiers had had a Majority for ſome Time), though they had themſelves ſaid very hard Things of the Partition Treaty, and the Manner of tranſacting it, in their Addreſs; yet, in Behalf of their favourite Brethren, they now preſented an Addreſs of another Strain; wherein they beſeech his Majeſty not to paſs any Cenſure on thoſe Lords, until they were tried upon the Impeachments the Commons

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mons had preferred againſt them. Thus Matters reſted till the Fifth of *May*, when the Lords ſent a Meſſage to the Commons, to remind them, that there were yet no Articles preferred againſt the impeached Lords: Thereupon the Commons, on the Ninth of the ſame Month, ſent up Articles againſt *Edward* Earl of *Orford*, in Maintenance of their Impeachment.

Articles againſt the Earl of Orford.

Theſe Articles ſet forth, That the Earl, preferring his private Intereſt to the publick Good, had, during an expenſive War, procured ſeveral Grants from his Majeſty, of Lands and exorbitant Sums of Money: That, while he commanded the Royal Navy in the *Streights*, he received the Publick Money, and converted it to his private Uſe; and then procured a Privy Seal to diſcharge him of it: That he received conſiderable Sums from the King of *Spain* alſo, with great Quantities of Wine, Oil, and other Proviſion for the Fleet, which he converted to his own Uſe: That he ſold and diſpoſed of ſeveral Veſſels as Prizes, without Condemnation: That, preſiding in the Commiſſion of Lord High Admiral, he had rejected the Requeſt of the *Eaſt-India* Company for ſuppreſſing Pirates; and had procured a Commiſſion for *William Kidd*, who had committed Piracy, encouraged thereto by his Hopes of the Earl's Protection: That, while he commanded the Royal Navy, he loſt ſeveral Opportunities of deſtroying the Enemy's Ships; and that he adviſed the King to enter into the Treaty of Partition, which was prejudicial to the Nation; with ſome other Things of leſs Moment.

His Anſwer.

To which the Earl anſwered, That his Majeſty, in Conſideration of his Services for many Years, had voluntarily made him a reverſionary Grant, of the Value of about 10000 *l.* That he had legally paſſed his Accounts for all Monies he had received on Account of the Publick: That whatever he received of the King of *Spain* for the Fleet, was duly diſtributed among the Seamen: That he conſtantly gave Orders for proceeding againſt the Prizes that were taken according to Law: That he never diſcouraged the *Eaſt-India* Company's Requeſt for the ſuppreſſing of Pirates: That *Kidd*'s Commiſſion was granted according to Law, and intended for the Publick Good; and, if he had committed Piracy, he was never incouraged in it by the Earl: that he had not neglected his Duty againſt the Enemy: and, conſidering his Services againſt the *French* Fleet, he did not expect to be charged therewith: And denies that he adviſed his Majeſty to enter into the Partition Treaty; averring, that he objected to it, and gave his Opinion againſt the ſame.

Articles againſt Lord Somers.

The Commons alſo, on the nineteenth of *May*, ſent up Articles againſt the Lord *Somers*; wherein they charge him with adviſing the Partition Treaties, and paſſing both the Powers to treat, and the Treaties themſelves, under the Great Seal, without the Knowledge of the Council, or the other Lords Juſtices, leaving one intire Blank Sheet, with ſeveral other Blanks, to be filled up, as well in the Commiſſion and Powers for negociating the ſaid Treaties, as in the Treaties themſelves; neither did he inroll them in *Chancery*, as the Law required: That he paſſed many unreaſonable Grants under the Broad Seal; and adviſed and procured divers Grants of the forfeited Eſtates in *Ireland*: That, beſides the Fees and Perquiſites of his Office, he procured a Penſion of 4000 *l. per Annum*, and ſeveral other unreaſonable Grants, for his own Benefit, in which his Majeſty was deceived: That he had procured a Commiſſion for *William Kidd*, a Perſon of ill Fame, who had turned Pirate; and procured a Grant for himſelf and ſome others, in feigned Names, of ſuch Veſſels and Goods as he ſhould take: That he had made illegal and unwarrantable Orders, while Chancellor; with ſome other Matters of leſs Moment.

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Lord Somers's *Anſwer.*

To which he anſwered, That he had, according to his Duty, given the King his Opinion freely on the Partition Treaties, and had his Majeſty's Letters for his Warrant in ſetting the Great Seal to the ſaid Commiſſions and Treaties: That it was not incumbent upon him, as Lord Chancellor, to ſee the ſaid Commiſſions or Treaties inrolled; but the Care of it belonged to the Prothonotary of the Court of *Chancery*: That he never paſſed any Grants without ſufficient Warrants; and that more conſiderable Grants had paſſed in the Times of his Predeceſſors: That the Annual Penſion of 4000 *l. per Annum*, had been allowed to other Chancellors: That he never begged any Grant but what he had received, was given him voluntarily by his Majeſty, in Conſideration of his Services: That the Commiſſion to Captain *Kidd* was then thought neceſſary for the Preſervation of Trade and Navigation. He acknowledges, that *Samuel Newton*'s Name, in the Grant of the Veſſels and Goods that ſhould be taken by *Kidd*, was uſed in Truſt for him (the Lord *Somers*;) but that *Kidd* having abuſed his Commiſſion, and turned Pirate, his Employers had loſt their Expences, inſtead of making any Gains by ſending him out.

Articles againſt Lord Halifax.

The Articles againſt *Charles* Lord *Halifax* ſet forth, That, whereas the Commons had thought it reaſonable to apply the forfeited Eſtates in *Ireland*, to the Uſe of the Publick, he had procured a Grant of ſeveral Sums, forfeited to the Crown in that Kingdom, amounting to 13,000 *l.* That he had procured ſeveral Grants alſo in *England*; particularly a Grant of 14,000 *l.* to be raiſed out of ſcrubbed Beech, Birch, Holly, *&c.* growing in his Majeſty's Foreſts; under Colour whereof, he had cut down, and ſold for his own Benefit, ſapling Oaks, and many Tuns of well-grown Timber: That he procured ſeveral Offices and Places in the *Treaſury* and *Exchequer*, which he enjoyed at the ſame Time, though they were manifeſtly inconſiſtent, and ought to have been a Check on each other: And laſtly, that he adviſed the Partition Treaties.

Lord Halifax's *Anſwer.*

To this, the Lord *Halifax* anſwered, That he did accept a Grant of Debts, *&c.* forfeited to the Crown in *Ireland*, and amounting to 13,000 *l.* as he lawfully might; but that they had been taken away from him by the late Act of Reſumption, and he had not made clear of them above 400 *l.* That he had alſo accepted of the Grants mentioned in *England*; and particularly

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particularly 2000*l. per Annum* for ſeven Years, to be raiſed by the Fall of ſcrubbed Beech, Birch, *&c.* and if any Abuſe had been in cutting the Wood, he was not anſwerable for the ſame, it being done by the Direction of his Majeſty's Surveyor-General, and other Officers. He does not deny his enjoying the ſaid Places in the *Treaſury* and the *Exchequer*; but ſays it was but for a little while: He deſigned, from the Beginning, to lay ſome of them down, and had actually relinquiſhed ſome of them. He ſays, he never adviſed the Partition Treaties, or was conſulted thereupon; but when the Matter was diſcourſed of at *Tunbridge-Wells*, he made ſeveral Objections to the ſame.

A Meſſage from the Lords.

The Lords, by a Meſſage the 24th of *May*, put the Commons in Mind of replying to the Earl of *Orford*'s Anſwer, That a Day might be appointed for his Trial; and of exhibiting Articles againſt the Earl of *Portland*.

The Commons Anſwer.

To which the Commons anſwered, That they deferred bringing up the Replication againſt the Earl of *Orford*, becauſe they thought fit to begin with the Trial of the Lord *Somers*; and to the other Part of the Lords Meſſage, putting them in Mind of ſending up Articles of Impeachment againſt the Earl of *Portland*, *&c.* they held it to be unparliamentary, they, as Proſecutors, being the proper Judges, where Articles of Impeachment ought to be brought up.

Another Meſſage from the Lords.

Then the Lords ſent a Meſſage to the Commons, acquainting them, That they had appointed the ninth of *June*, for the Trial of the Earl of *Orford*; and that the Commons might reply, if they thought fit: They alſo put them in Mind again, That no Articles were exhibited againſt the Earl of *Portland*; which, after an Impeachment had ſo long depended, they obſerved, was a Hardſhip, and not agreeable to the uſual Method of Parliament.

The Commons Anſwer.

To which the Commons replied, That it was their undoubted Right, when ſeveral Perſons ſtood impeached, to bring to Trial ſuch of them, in the firſt Place, as they ſaw fit; and that no Day ought to be appointed by their Lordſhips for the Trial, without ſome previous Signification to their Lordſhips from the Commons, of their being ready to proceed therein; and therefore the Commons could not agree to the Day appointed by their Lordſhips, for the Trial of the Earl of *Orford:* And as to that Part of their Meſſage, relating to the ſending up Articles againſt the Earl of *Portland*, they thought their Lordſhips, by the frequent Repetition of it, intended to introduce Diſputes, to the Delay of Juſtice, and in Breach of that good Correſpondence which ought to be obſerved between the two Houſes.

The Lords, in a ſubſequent Meſſage, put the Commons in Mind of replying to the Lord *Somers*; and aſſerted, That the Right of limiting a convenient Time for the Trial, was lodged in them.

Differences ariſe between the two Houſes, concerning the Trials of the four Lords.

The Commons afterwards, at a Conference, propoſed the appointing a Committee of both Houſes, to conſider of the moſt proper Ways and Methods of proceeding on Impeachments: But the Lords, by another Meſſage, inſiſted on their Right of appointing the Day of Trial, without any previous Signification from the Commons, of their being ready; and complain that the Commons ſhould charge them with delaying Juſtice.

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The Commons, on the other hand, inſiſted on the nominating a Committee of both Houſes, to adjuſt the neceſſary Preliminaries to the Trials; as whether the impeached Lords ſhould appear at their Trials, at their Lordſhips Bar, as Criminals? And whether they ſhould ſit as Judges at each other's Trials, or vote in their own Caſes; as they found by their Lordſhips Journals they had been admitted to do.

The Lords appoint a Day for the Trial of Lord Somers;

Still the Lords refuſed to appoint any ſuch Committee, to conſider of the Ways and Methods of Impeachments, and appointed *Friday*, the 13th of *June*, for the Trial of the Lord *Somers:* But the Commons refuſed to appear at any Trial, till the Preliminaries were ſettled.

and declare their Reſolutions, as to the Order of the Trial.

The Lords afterwards ſent the following Reſolutions to the Commons, (*viz.*) 1ſt, That no Lord of Parliament, impeached for High Crimes and Miſdemeanors, and coming to his Trial, ſhall be without the Bar. 2dly, That no Lord, impeached of High Crimes and Miſdemeanors, can be precluded from voting on any Occaſion, except in his own Trial: And, that the Commons ſhould not pretend they were ſtreightened for Time, the Lords ordered the Trial of the Lord *Somers* to be put off to the 17th Inſtant; and agreed to a free Conference with the Commons.

A Conference between the two Houſes thereon.

At this Conference, the Lord *Haverſham* ſaid, The Lords had ſo high an Opinion of the Juſtice of the Houſe of Commons, that they hoped Juſtice ſhould never be made uſe of, as a Mask for any Deſign: That it was a Demonſtration, the Commons thought the Lords innocent, becauſe there were ſeveral other Lords engaged in the ſame Things, whom they did not accuſe, but left them at the Head of Affairs, near the King's Perſon, to do any Miſchief, if they were inclined to it; when they were both alike guilty, and concerned in the ſame Facts.

The Commons reſent an Expreſſion of Lord Haverſham's.

Theſe Expreſſions were highly reſented by Sir *Chriſtopher Muſgrave*, and the Managers for the Commons, who took them to be ſuch an Aſperſion on the Honour of that Houſe, that they immediately withdrew from the Conference. As they withdrew, the Lord Steward ſaid, He hoped they would not think, that Lord had any Authority from the Houſe of Lords to uſe any ſuch Expreſſions towards the Commons.

However the Managers being returned to their Houſe, it was Reſolved, That *John* Lord *Haverſham* had, at a free Conference, uttered moſt ſcandalous Reproaches and falſe Expreſſions, highly reflecting upon the Honour and Juſtice of the Houſe of Commons, and tending to the making a Breach in the good Correſpondence between the Lords and Commons, and to the interrupting the Publick Juſtice of the Nation, by delaying the Proceedings on Impeachments: And Reſolved, That *John* Lord *Haverſham* be charged before the Lords for the Words ſpoken at the ſaid Conference; and that the Lords be deſired to proceed in Juſtice againſt him, and to inflict ſuch Puniſhment upon the ſaid Lord, as ſo high an Offence againſt the Commons does deſerve.

Demand Juſtice againſt Lord Haverſham.

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The Lords afterwards desired, that the free Conference might be renewed, in order to set all Matters right: But the Commons Resolved, That it was not consistent with their Honour to renew the free Conference, till Justice was done them on the Lord *Haversham*.

Rules to be observed at the Trial of a Peer.

The Lords, on the 16th of *June*, sent the following Rules to be observed at the Trial of the Lord *Somers* the next Day, *viz.*

That the whole Impeachment is to be read, and then the Answer; which being done, the Lord Keeper is to tell the Commons, that now they may go on with their Evidence.

Then the Lord Keeper is to declare, that the Court is proceeding to hear the Evidence, and desire the Peers to give Attention.

If any of the Peers, or Members of the House of Commons that manage the Evidence, or the Lord impeached, do desire to have any Question asked, they must desire the Lord Keeper to ask the same.

If any Doubt doth arise at the Trial, no Debate is to be in the Court, but the Question suspended to be debated in this House.

The Members of the House of Commons to be there before the Peers come.

None to be covered at the Trial, but the Peers.

That such Peers, at the Trial of the impeached Lord, who, at the Instance of the said Lord, or of the Commons, shall be admitted Witnesses, are to be sworn at the Clerk's Table, and the Lord Keeper to administer the Oath, and to deliver their Evidence in their own Places.

Those Witnesses that are Commoners are to be sworn at the Bar by the Clerk, and are to deliver their Evidence there.

The impeached Lord may cross-examine Witnesses, *viva voce*.

Lord Haversham justifies his Expressions.

The same Day the Commons received the Lord *Haversham*'s Answer to their Charge; in which he justified the Expressions he had used at the late Conference between the two Houses; and still asserted, that the Commons had shewn themselves partial, and even unjust, in proceeding against the impeached Lords, while they suffered the Earl of *Jersey*, Mr. Secretary *Vernon*, Sir *Joseph Williamson*, Sir *Edward Seymour*, Sir *Stephen Fox*, and Mr. *Pelham*, who were engaged in the same Transactions, to remain unmolested.

The Commons Reasons for not appearing at the Trial of the Lord Somers.

On the other Hand, the Commons gave several Reasons why they could not appear at the Trial of the Lord *Somers*, the principal whereof were; First, That the Lords had not agreed to a Committee of both Houses for settling the Preliminaries. Secondly, That they never could appear as Prosecutors before their Lordships, till they had given them Satisfaction that Lords impeached of the said Crimes, should not sit as Judges at each other's Trials for those Crimes. Thirdly, Because the Commons had received no Reparation for the great Indignity offered them at a free Conference by the Lord *Haversham*.

The Peers acquit Lord Somers.

The Lords, however proceeded to the Trial of the Lord *Somers* the 17th Instant, in *Westminster-Hall*; that is, they caused the Articles against him and his Answer to be read; and the Commons not having replied, and consequently no Issue joined, the Lords proceeded to put the following Question; That *John* Lord *Somers* be acquitted of the Articles of Impeachment against him, exhibited by the House of Commons, and all Things therein contained; and that the said Impeachment be dismissed: Which was resolved in the Affirmative, in the Absence of the Commons.

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The Lords Answer to the Commons Reasons for not appearing at the Trial.

On the 20th of *June*, the Lords sent an Answer to the Commons Reasons for not appearing at the Trial of the impeached Lords; wherein their Lordships say, That they acknowledge that the House of Commons have a Right of doing Justice upon these Impeachments, by bringing them to a Trial, and condemning or acquitting the Parties in a reasonable Time: That there never was a Committee of both Houses yielded to by the Lords, in case of an Impeachment for High Crimes and Misdemeanors; and they should make no new Precedent on this Occasion: And as to the Pretence the Commons made to delay the Trials, on Account of some Expressions that fell from my Lord *Haversham*, their Lordships answer, They had omitted nothing which might give the Commons all reasonable Satisfaction in that Matter; and observed further, that the Business had no Relation to the Trial of the impeached Lords, and therefore could not imagine why the Commons should make Satisfaction and Reparation against the Lord *Haversham*, a necessary Condition for going on with the Trials.

The Commons Resolve, That the Lords had refused them Justice.

The Commons, on the contrary, came to a Resolution on the same 20th of *June*, That the Lords had refused Justice to the Commons, upon the Impeachment against the Lord *Somers*, by denying a Committee of both Houses to settle the Preliminaries, and afterwards proceeding to a pretended Trial of the said Lord, which could tend only to protect him from Justice, by Colour of an illegal Acquittal; against which Proceeding the Commons did solemnly protest, as being repugnant to the Rules of Justice, and therefore null and void: That the House of Lords, by the pretended Trial of *John* Lord *Somers*, had endeavoured to overturn the Right of Impeachments lodged in the House of Commons by the ancient Constitution of this Kingdom, for the Safety and Protection of the Commons against the Power of great Men, and had made an Invasion on the Liberties of the Subject, by laying a Foundation of Impunity for the greatest Offenders: That all the ill Consequences which might attend the Delay of the Supplies given by the Commons, for preserving the publick Peace, and maintaining the Balance of *Europe*, by supporting our Allies against the Power of *France*, were to be imputed to those, who, to procure an Indemnity for their own enormous Crimes, had used their utmost Endeavours to make a Breach between the two Houses.

The Earl of Orford's Trial appointed.

In answer to this Protest, the Lords sent the Commons a Message that Day; acquainting them, that the Commons not appearing to maintain their Articles against the Lord *Somers*, they had acquitted him of the Articles of Impeachment, and dismissed the same; and that they had appointed *Monday* next for the Trial of the Earl of *Orford*: That from the

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particularly 2000*l. per Annum* for ſeven Years, to be raiſed by the Fall of ſcrubbed Beech, Birch, *&c.* and if any Abuſe had been in cutting the Wood, he was not anſwerable for the ſame, it being done by the Direction of his Majeſty's Surveyor-General, and other Officers. He does not deny his enjoying the ſaid Places in the *Treaſury* and the *Exchequer*; but ſays it was but for a little while: He deſigned, from the Beginning, to lay ſome of them down, and had actually relinquiſhed ſome of them. He ſays, he never adviſed the Partition Treaties, or was conſulted thereupon; but when the Matter was diſcourſed of at *Tunbridge-Wells*, he made ſeveral Objections to the ſame.

A Meſſage from the Lords.

The Lords, by a Meſſage the 24th of *May*, put the Commons in Mind of replying to the Earl of *Orford*'s Anſwer, That a Day might be appointed for his Trial; and of exhibiting Articles againſt the Earl of *Portland*.

The Commons Anſwer.

To which the Commons anſwered, That they deferred bringing up the Replication againſt the Earl of *Orford*, becauſe they thought fit to begin with the Trial of the Lord *Somers*; and to the other Part of the Lords Meſſage, putting them in Mind of ſending up Articles of Impeachment againſt the Earl of *Portland*, *&c.* they held it to be unparliamentary, they, as Proſecutors, being the proper Judges, where Articles of Impeachment ought to be brought up.

Another Meſſage from the Lords.

Then the Lords ſent a Meſſage to the Commons, acquainting them, That they had appointed the ninth of *June*, for the Trial of the Earl of *Orford*; and that the Commons might reply, if they thought fit: They alſo put them in Mind again, That no Articles were exhibited againſt the Earl of *Portland*; which, after an Impeachment had ſo long depended, they obſerved, was a Hardſhip, and not agreeable to the uſual Method of Parliament.

The Commons Anſwer.

To which the Commons replied, That it was their undoubted Right, when ſeveral Perſons ſtood impeached, to bring to Trial ſuch of them, in the firſt Place, as they ſaw fit; and that no Day ought to be appointed by their Lordſhips for the Trial, without ſome previous Signification to their Lordſhips from the Commons, of their being ready to proceed therein; and therefore the Commons could not agree to the Day appointed by their Lordſhips, for the Trial of the Earl of *Orford:* And as to that Part of their Meſſage, relating to the ſending up Articles againſt the Earl of *Portland*, they thought their Lordſhips, by the frequent Repetition of it, intended to introduce Diſputes, to the Delay of Juſtice, and in Breach of that good Correſpondence which ought to be obſerved between the two Houſes.

The Lords, in a ſubſequent Meſſage, put the Commons in Mind of replying to the Lord *Somers*; and aſſerted, That the Right of limiting a convenient Time for the Trial, was lodged in them.

Differences ariſe between the two Houſes, concerning the Trials of the four Lords.

The Commons afterwards, at a Conference, propoſed the appointing a Committee of both Houſes, to conſider of the moſt proper Ways and Methods of proceeding on Impeachments: But the Lords, by another Meſſage, inſiſted on their Right of appointing the Day of Trial, without any previous Signification from the Commons, of their being ready; and complain that the Commons ſhould charge them with delaying Juſtice.

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The Commons, on the other hand, inſiſted on the nominating a Committee of both Houſes, to adjuſt the neceſſary Preliminaries to the Trials; as whether the impeached Lords ſhould appear at their Trials, at their Lordſhips Bar, as Criminals? And whether they ſhould ſit as Judges at each other's Trials, or vote in their own Caſes; as they found by their Lordſhips Journals they had been admitted to do.

The Lords appoint a Day for the Trial of Lord Somers;

Still the Lords refuſed to appoint any ſuch Committee, to conſider of the Ways and Methods of Impeachments, and appointed *Friday*, the 13th of *June*, for the Trial of the Lord *Somers:* But the Commons refuſed to appear at any Trial, till the Preliminaries were ſettled.

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A Conference between the two Houſes thereon.

At this Conference, the Lord *Haverſham* ſaid, The Lords had ſo high an Opinion of the Juſtice of the Houſe of Commons, that they hoped Juſtice ſhould never be made uſe of, as a Mask for any Deſign: That it was a Demonſtration, the Commons thought the Lords innocent, becauſe there were ſeveral other Lords engaged in the ſame Things, whom they did not accuſe, but left them at the Head of Affairs, near the King's Perſon, to do any Miſchief, if they were inclined to it; when they were both alike guilty, and concerned in the ſame Facts.

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However the Managers being returned to their Houſe, it was Reſolved, That *John* Lord *Haverſham* had, at a free Conference, uttered moſt ſcandalous Reproaches and falſe Expreſſions, highly reflecting upon the Honour and Juſtice of the Houſe of Commons, and tending to the making a Breach in the good Correſpondence between the Lords and Commons, and to the interrupting the Publick Juſtice of the Nation, by delaying the Proceedings on Impeachments: And Reſolved, That *John* Lord *Haverſham* be charged before the Lords for the Words ſpoken at the ſaid Conference; and that the Lords be deſired to proceed in Juſtice againſt him, and to inflict ſuch Puniſhment upon the ſaid Lord, as ſo high an Offence againſt the Commons does deſerve.

Demand Juſtice againſt Lord Haverſham.

The

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The Lords afterwards desired, that the free Conference might be renewed, in order to set all Matters right: But the Commons Resolved, That it was not consistent with their Honour to renew the free Conference, till Justice was done them on the Lord *Haversham*.

Rules to be observed at the Trial of a Peer.

The Lords, on the 16th of *June*, sent the following Rules to be observed at the Trial of the Lord *Somers* the next Day, *viz.*

That the whole Impeachment is to be read, and then the Answer; which being done, the Lord Keeper is to tell the Commons, that now they may go on with their Evidence.

Then the Lord Keeper is to declare, that the Court is proceeding to hear the Evidence, and desire the Peers to give Attention.

If any of the Peers, or Members of the House of Commons that manage the Evidence, or the Lord impeached, do desire to have any Question asked, they must desire the Lord Keeper to ask the same.

If any Doubt doth arise at the Trial, no Debate is to be in the Court, but the Question suspended to be debated in this House.

The Members of the House of Commons to be there before the Peers come.

None to be covered at the Trial, but the Peers.

That such Peers, at the Trial of the impeached Lord, who, at the Instance of the said Lord, or of the Commons, shall be admitted Witnesses, are to be sworn at the Clerk's Table, and the Lord Keeper to administer the Oath, and to deliver their Evidence in their own Places.

Those Witnesses that are Commoners are to be sworn at the Bar by the Clerk, and are to deliver their Evidence there.

The impeached Lord may cross-examine Witnesses, *viva voce*.

Lord Haversham justifies his Expressions.

The same Day the Commons received the Lord *Haversham*'s Answer to their Charge; in which he justified the Expressions he had used at the late Conference between the two Houses; and still asserted, that the Commons had shewn themselves partial, and even unjust, in proceeding against the impeached Lords, while they suffered the Earl of *Jersey*, Mr. Secretary *Vernon*, Sir *Joseph Williamson*, Sir *Edward Seymour*, Sir *Stephen Fox*, and Mr. *Pelham*, who were engaged in the same Transactions, to remain unmolested.

The Commons Reasons for not appearing at the Trial of the Lord Somers.

On the other Hand, the Commons gave several Reasons why they could not appear at the Trial of the Lord *Somers*, the principal whereof were; First, That the Lords had not agreed to a Committee of both Houses for settling the Preliminaries. Secondly, That they never could appear as Prosecutors before their Lordships, till they had given them Satisfaction that Lords impeached of the said Crimes, should not sit as Judges at each other's Trials for those Crimes. Thirdly, Because the Commons had received no Reparation for the great Indignity offered them at a free Conference by the Lord *Haversham*.

The Peers acquit Lord Somers.

The Lords, however proceeded to the Trial of the Lord *Somers* the 17th Instant, in *Westminster-Hall*; that is, they caused the Articles against him and his Answer to be read; and the Commons not having replied, and consequently no Issue joined, the Lords proceeded to put the following Question; That *John* Lord *Somers* be acquitted of the Articles of Impeachment against him, exhibited by the House of Commons, and all Things therein contained; and that the said Impeachment be dismissed: Which was resolved in the Affirmative, in the Absence of the Commons.

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The Lords Answer to the Commons Reasons for not appearing at the Trial.

On the 20th of *June*, the Lords sent an Answer to the Commons Reasons for not appearing at the Trial of the impeached Lords; wherein their Lordships say, That they acknowledge that the House of Commons have a Right of doing Justice upon these Impeachments, by bringing them to a Trial, and condemning or acquitting the Parties in a reasonable Time: That there never was a Committee of both Houses yielded to by the Lords, in case of an Impeachment for High Crimes and Misdemeanors; and they should make no new Precedent on this Occasion: And as to the Pretence the Commons made to delay the Trials, on Account of some Expressions that fell from my Lord *Haversham*, their Lordships answer, They had omitted nothing which might give the Commons all reasonable Satisfaction in that Matter; and observed further, that the Business had no Relation to the Trial of the impeached Lords, and therefore could not imagine why the Commons should make Satisfaction and Reparation against the Lord *Haversham*, a necessary Condition for going on with the Trials.

The Commons Resolve, That the Lords had refused them Justice.

The Commons, on the contrary, came to a Resolution on the same 20th of *June*, That the Lords had refused Justice to the Commons, upon the Impeachment against the Lord *Somers*, by denying a Committee of both Houses to settle the Preliminaries, and afterwards proceeding to a pretended Trial of the said Lord, which could tend only to protect him from Justice, by Colour of an illegal Acquittal; against which Proceeding the Commons did solemnly protest, as being repugnant to the Rules of Justice, and therefore null and void: That the House of Lords, by the pretended Trial of *John* Lord *Somers*, had endeavoured to overturn the Right of Impeachments lodged in the House of Commons by the ancient Constitution of this Kingdom, for the Safety and Protection of the Commons against the Power of great Men, and had made an Invasion on the Liberties of the Subject, by laying a Foundation of Impunity for the greatest Offenders: That all the ill Consequences which might attend the Delay of the Supplies given by the Commons, for preserving the publick Peace, and maintaining the Balance of *Europe*, by supporting our Allies against the Power of *France*, were to be imputed to those, who, to procure an Indemnity for their own enormous Crimes, had used their utmost Endeavours to make a Breach between the two Houses.

The Earl of Orford's Trial appointed.

In answer to this Protest, the Lords sent the Commons a Message that Day; acquainting them, that the Commons not appearing to maintain their Articles against the Lord *Somers*, they had acquitted him of the Articles of Impeachment, and dismissed the same; and that they had appointed *Monday* next for the Trial of the Earl of *Orford*: That from the

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Commons ſtill preſſing for a Committee of both Houſes, their Lordſhips inferred, that they never deſigned the bringing any of their Impeachments to a Trial: And as to the Lord *Haverſham*, his Anſwer was before the Commons, and the Lords reſolved to do Juſtice in that Matter.

The Commons on the other hand Ordered, That no Member ſhould preſume to appear at the pretended Trial of the Earl of *Orford*, on Pain of incurring the utmoſt Diſpleaſure of the Houſe.

Warm Reſolutions of the Lords.

On *Monday* the 23d of *June*, the Lords Reſolved, That the Reſolutions of the Commons, of the 20th Inſtant, contained moſt unjuſt Reflections on the Honour and Juſtice of the Houſe of Peers, and were contrived to cover their affected and unreaſonable Delays in proſecuting the impeached Lords, and did manifeſtly tend to the Deſtruction of the Judicature of the Lords; to the rendering Trials and Impeachments impracticable for the future; to the ſubverting the Conſtitution of the *Engliſh* Government; and therefore, whatever ill Conſequences might ariſe from the ſo long deferring the Supplies of this Year's Service, they were to be attributed to the fatal Council of the putting off the Meeting of a Parliament ſo long, and to the unneceſſary Delays of the Houſe of Commons.

Earl of Orford *acquitted.*

The ſame Day the Lords proceeded to acquit the Earl of *Orford*, as they had done the Lord *Somers*; and on the 24th of *June*, the laſt Day of the Seſſion, they made the following Orders, *viz.*

The Charge againſt the Lord Haverſham, *and the other Impeachments diſmiſſed.*

" The Houſe of Commons not having proſecuted their Charge, which they brought " up againſt *John* Lord *Haverſham*, for Words " ſpoken by him, at a free Conference the 13th " Inſtant; The ſaid Charge is hereby diſmiſſed.

" The Earl of *Portland* being impeached by " the Houſe of Commons of high Crimes and " Miſdemeanors, the 1ſt Day of *April* laſt; The " Impeachment is hereby diſmiſſed, there being no Articles exhibited againſt him.

" The Houſe of Commons having impeached *Charles* Lord *Halifax* of High Crimes " and Miſdemeanors, on the 15th Day of " *April* laſt, and on the 14th Day of this Inſtant *June* exhibited Articles againſt him; " to which he having anſwered, and no further Proſecution thereupon: The ſaid Impeachment and Articles, are hereby diſmiſſed." At the ſame Time they diſmiſſed an Impeachment, that had been preferred againſt the Duke of *Leeds* by a former Parliament.

Remarks on the Proceedings againſt the four Lords.

It ſeems to have been agreed, both by the Lords and Commons, in this Diſpute, that the Partition Treaty was of pernicious Conſequence, and that the tranſacting it in a private Manner, without communicating it to the Council, was a High Miſdemeanor in thoſe that adviſed and tranſacted it: But whether the Commons ſuſpected that the Lords, who were generally in the Intereſt of the Old Miniſtry, would not paſs any Cenſure on the impeached Lords, or what other Reaſon influenced their Conduct, is uncertain. The Commons ſeem to have been a little dilatory in their Proceedings, and might deſign the Lords ſhould have lain under an Impeachment, during the Receſs of the Parliament. There might poſſibly be ſomething of Party alſo in the Caſe: The impeached Lords were the Whig-Leaders, and had long reigned at Court, without Controul; and the Tories who ſucceeded them at this Time, had a View, perhaps, to the preventing their Return to their Poſts, as well as to the bringing them to Juſtice for negotiating the Partition Treaty, and for the other Miſdemeanors mentioned in the Articles: There are few Proſecutions of this kind, but there is a great deal of private Pique, Intereſt, and Reſentment, uſually mixed with the Proſecutors Views of publick Good. Though this Difference may be obſerved between the one Party and the other, that when the one procure a Change of the Miniſtry, and get their Rivals removed, they ſeldom proceed Capitally againſt their Adverſaries, as the others have conſtantly done on every Turn in their Favour.

I ſhall conclude with obſerving, that both Lords and Commons ſeemed to reſent it, that the Kingdom was ſo much under the Influence of *Dutch* Councils, and that ſuch exorbitant Grants were made to ſome Favourites of that Nation; and this probably gave a Riſe to theſe Impeachments: For it appears that in the Year 1695, King *William* made a Grant to the Earl of *Portland*, of the Manors of *Denbigh*, *Broomfield*, and *Yale*, being five Parts in Six of a whole Country, Part of the Demeſnes of the Prince of *Wales*: This Grant the Gentlemen of *Wales* oppoſed very ſtrenuouſly; firſt before the Lords of the Treaſury, and afterwards in Parliament.

They repreſented, That the *Welch* were never ſubject to any but God and the King: That thoſe Lordſhips were unalienable: That they belonged to the Prince of *Wales*, when there was one; and the Rents now ſupported the Government there, the Salaries of the Judges, and other Officers of the Crown, being paid out of them: They ſaid, the Grant was too great for any Foreign Subject to have; and the People in the Country were too great to be ſubject to a Foreigner: That if ſuch large Grants were frequently made, there would be nothing left for the King, or his Succeſſors, to ſubſiſt on: They could not conceive, how the Glory and Grandeur of *England* could be upheld by a poor landleſs Crown, and a miſerable neceſſitous People: That they were not *Engliſh*, but Foreign Politicians, that adviſed the King to theſe Grants: That the Kings of *England* always reigned beſt, when they had the Affections of their *Engliſh* Subjects; of which they were ſecure, when the People were ſenſible the King was intirely in their Intereſt, *and loved the* Engliſh *Soil as well as the People's Money*. To which Mr. *Price*, then a Member of the Commons, and afterwards a Judge of great Fame, in a Speech upon this Occaſion in the Houſe, added, " We are in a Con- " federacy of War, and ſome of thoſe Con- " federates our Enemies in Trade, though " planted among us; ſome of them are of the " King's Council, ſome in the Army; and " the common Traders have poſſeſſed them- " ſelves of the Out-skirts of this great City:

We

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" We find ſome or other of them Naturalized, and others made Denizens: Every " Parliament, we find, endeavours for a " general Naturalization, and that warmly " ſollicited from Court: We ſee our good " Coin all gone, and our Confederates openly " coining baſe Money of *Dutch* Allay for us; " We ſee moſt Places of Power and Profit, " given to Foreigners: We ſee our Confederates in Conjunction with the *Scots*, to ruin " our *Engliſh* Trade: We ſee the Revenues of " the Crown daily given away to one or other, " who make Sale of them, and tranſmit their " Eſtates elſewhere: We do not find any of " them buy Lands or Eſtates among us; but " what they can get from us, they ſecure in " their own Country: How can we hope for " happy Days in *England*, when this great " Lord, and other Foreigners, (though naturalized) are in the *Engliſh*, and alſo in the " *Dutch* Councils? If theſe Strangers (though " Confederates) ſhould be in different Intereſts, (as they evidently are, in Point of " Trade) to which Intereſt is it to be ſuppoſed theſe great Foreign Counſellors and Favourites would adhere? So that I foreſee, " when we are reduced to extreme Poverty, " (as we are now very near it) *we are to be* " *ſupplanted by our Neighbours, and become a* " *Colony to the Dutch.* We ought to conſider " we are *Engliſhmen*; and, like good Patriots, " ſtand by our Country, and not ſuffer it to " become Tributary to Strangers. We have " rejoiced, that we have beat out of this " Country Popery and Slavery, and do now " with as great Joy entertain Socinianiſm and " Poverty; and yet we ſee our Properties " daily given away, and our Liberties muſt " follow". He deſired, however, Redreſs rather than Puniſhment; and therefore neither moved for the Impeachment or Baniſhment of this Noble Lord; only begged, he might have no Power over them, nor they any Dependance upon him: But moved for an Addreſs to his Majeſty, to ſtop the Grant that was paſſing to the Earl of *Portland*, of the Lordſhips of *Denbigh*, *Broomfield*, and *Yale*, and other Lands in the Principality of *Wales*, and that the ſame be not granted, but by Conſent of Parliament.

Whereupon an Addreſs was immediately drawn up, by the unanimous Conſent of the Houſe, and preſented to his Majeſty the 22d of *January*, deſiring he would put a Stop to his Grant to the Earl of *Portland*: To which his Majeſty anſwered, *I have a Kindneſs for my Lord* Portland, *which he has deſerved of me, by his long and faithful Services; but I ſhould not have given him theſe Lands, if I had imagined the Houſe of Commons could have been concerned. I will therefore recall the Grant, and find ſome other Way of ſhewing my Favour to him.*

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And accordingly, in *May* 1696, the following Grant was made to the Lord *Portland*, in Recompence for the Revenues of the Principality of *Wales*.

1. A Grant of the Manor of *Grantham*, in *Com' Lincoln.*

2. Of the Honour of *Penrith*, in *Com' Cumberland.*

3. Of the Manor of *Drakelow*, in *Com' Derb'.*

4. Of the Manor of *Terrington*, in *Com' Norfolk.*

4. Of the Manors of *Partington*, *Briſtol*, *Garth*, *Hornſey*, *Thwing*, *Burneſly*, and *Seven*, in *Com' Ebor'.*

All Parcel of the antient Revenue of the Crown of *England*: And of the Manor of *Pevenſey*, in *Com' Suſſex.*

Parcel of the Dutchy of *Lancaſter*, and of the Lands and Hereditaments thereto belonging, *to the ſaid Earl, and his Heirs.*

As of his Majeſty's Manor of *Eaſt-Greenwich*, in *Com' Kent*, under the Rent of 4 *l.* 13 *s.* 4 *d.*

There was alſo granted to the ſaid Earl all the little Remainder of the Fee-Farm Rents, worth, to be ſold, 24,000 *l.* Given, out of mere Bounty, 23,000 *l.*

The Lord *Portland* had alſo a Grant out of the forfeited Eſtates in *Ireland*, of 135,820 Acres. To the Earl of *Albemarle* was granted, 108,633 Acres. To the Earl of *Athlone*, 26,480 Acres. To the Earl of *Galway*, 36,148 Acres. All theſe Noblemen being Foreigners.

And to the Lady *Elizabeth Villars*, a She-Favourite of King *William*'s, was granted 95,649 Acres, being the Private Eſtate of his Father King *James* II. and valued at 25,995 *l. per Ann.*

Such were the Grants that put the Houſe of Commons out of Humour with the Court; and was one Occaſion of the aboveſaid Impeachment, and of the Change of the Miniſtry.

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Colonel Bayard's *Trial.*

The Trial of Colonel NICHOLAS BAYARD, of the Province of *New York*, *America*, for *High-Treaſon*, committed there, before *William Atwood*, *Abraham de Peyſter*, and *Robert Waters*, Eſquires, conſtituted Commiſſioners for the Trial of the ſaid NICHOLAS BAYARD, and others, for High-Treaſon, by *John Nanfan*, Eſq; Lieutenant-Governor, and Commander in Chief, of the Province of *New York*, the 19th of *February*, 1701. 13. *W.* III.

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The Indictment.

THE Indictment charged, That the ſaid Colonel *Nicholas Bayard*, on the 10th of *December*, in the 13th of his preſent Majeſty, in the *Dock-Ward* of the ſaid City and County of *New-York*, and divers other Days and Times, did compaſs, imagine, and contrive, to alter and ſubvert his Majeſty's Government of *New-York*: And to that End did

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did uſe many indirect Practices, to ſtir up a Mutiny, and procure a Deſertion of his Majeſty's Soldiers in the Garriſon of *Fort-William-Henry*, near the ſaid City of *New York*; and did draw in great Numbers of the ſaid Soldiers, and others, to ſign falſe and ſcandalous Libels againſt his ſaid Majeſty's Government, and ſigned the ſame himſelf: And, amongſt other Things reflecting on the Adminiſtration, had ſuggeſted in the ſaid Libels, *That his Majeſty's Subjects of that Province had been oppreſſed, and the Government rendered cheap and vile in the Eyes of the People; and that the preſent General Aſſembly of that Province was not a lawful Aſſembly*; by which malicious Slanders in the ſaid Libels, he had incited his Majeſty's Subjects of that Province to diſown the preſent Authority, and caſt off their Obedience to his Majeſty; againſt the Duty of his Allegiance, *&c.*

Mr. Attorney General, being of Opinion there was no Treaſon in the Charge, refuſed to appear and proſecute the Priſoner: Whereupon Mr. Solicitor managed the Proſecution againſt the Colonel, who complained, that the Bill was found againſt him but by eleven of the Grand-Jury, and not one of them was of *Engliſh* Extraction, but all *Dutch:* But the Court ordered a Minute to be made, that the Indictment was found by more than Twelve.

Objections to the Grand Jury,

Then the Petty Jury was called and ſworn; of whom the Priſoner obſerved, one of them was an Alien; two others were not Freeholders; and all the reſt of *Dutch* Extraction, and ignorant of the *Engliſh* Language.

and Petty Jury.

The Evidence being called, *Samuel Clows* was ſworn, and teſtified, That Colonel *Bayard* ſhewed him three Addreſſes; the firſt to the Lord *Cornbury*, to congratulate his Arrival in that Government: The ſecond was to the King, and the third Addreſs to the Houſe of Commons, or the Parliament of *England*; and in one of the laſt, ſpeaking of the Lord *Bellamont*'s Adminiſtration, it was ſaid, that the hotteſt and moſt ignorant of the People were put into Places of Truſt: That the late General Aſſembly having choſen a Speaker they were informed was an Alien, It was moved, it might be inquired into; which Motion being rejected, ten, or one half, of the Repreſentatives, left the Houſe. However, the Reſidue proceeded to make Acts: By one of which, they gave a Sum of Money to the Lieutenant Governor, to tempt him to paſs their Acts; and another Sum to the Chief Juſtice of the Province, to find Law and Form for their Proceedings: And that theſe Practices tended to the rendering the Government vile and cheap in the Eyes of the People.

The Evidence.

Then ſeveral Soldiers, and others, teſtified, that they were deſired to ſign the ſaid Addreſſes; and ſome ſigned them, and others did not: The Addreſſes lay at the Coffee-Houſe, and there might be 200 Hands to them. One Witneſs depoſed, that it was Colonel *Bayard* left the ſaid Addreſſes at the Coffee-Houſe; and another ſaid, he ſaw the Colonel there; and he ſaid, it was for the Good of the Country: But none of them teſtified the Colonel deſired them to ſign the Addreſſes.

Upon this Evidence Mr. Solicitor obſerved, that the Libels ſet forth in the Indictment were proved; and thereby the Peace of the Government had been diſturbed.

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Then the Priſoner's Counſel entered upon his Defence, and ſaid, that the Indictment did not charge him directly with any Fact, except his ſigning the ſaid Addreſſes, which they had denominated Libels: They had not ſo much as alledged, that the Peace of the Government was diſturbed; or that any Mutiny had been cauſed among the Soldiers; or that any of his Majeſty's Subjects had caſt off their Obedience to his Majeſty's Government: Only inſinuated he had endeavoured to diſturb the Peace: And ſhould it be admitted, the ſigning of thoſe Addreſſes was any Crime, the Evidence was very lame; for it did not appear that the Addreſſes, ſigned at the Coffee-Houſe, were the ſame that Colonel *Bayard* promoted: But they inſiſted further, That the Subject had a Right to petition the King; and, if that was admitted, it could be no Crime to perſuade Men to ſign ſuch Petitions and Addreſſes.

The Priſoner's Defence by his Counſel.

To which Judge *Atwood* anſwered for himſelf and his Brethren; If it was no Crime to petition the King, *It was a Crime for them to petition the Houſe of Commons*; for the King governed by his Prerogative in the Plantations.

The Priſoner's Counſel anſwered, That it was every Day's Practice, as appeared from the Votes, where they would find a Multitude of Addreſſes, Petitions, and Complaints, from the Plantations: That if the Subjects of the Plantations might not petition their King, or the Legiſlature, when they were grieved, their Condition was no better than that of Slaves: And the late Statute to check the exorbitant Actions of Governors in the Plantations, and make them accountable for their Adminiſtration in *England*, would be rendered ineffectual, if ever it ſhould be determined that the Subject had no Right to petition.

That the Act of Aſſembly, on which the Indictment was founded, could make no new Treaſons; and, indeed, that Act did no more than recognize the King and Queen, and declare, That whoever ſhould, by Force of Arms or otherwiſe, diſturb their Government, ſhould be deemed Rebels and Traitors; which they would have been, if that Act had never been made. Had theſe Addreſſes or Petitions been made to the *French* King, indeed, they might have been Treaſon; but, as it was, there was no Colour for conſtruing them to be treaſonable: That the Jury were not only to conſider, whether the Facts laid in the Indictment were proved, but whether there was any Treaſon in them? for otherwiſe, the moſt innocent Action might be called Treaſon in the Indictment, and made a Pretence for cutting off the Subject: But the Jury in theſe and other Capital Caſes, were Judges of the Law as well as of the Fact; as where one is indicted for Murder, and pleads Not Guilty generally, the Jury may bring him in guilty of Murder, Man-ſlaughter, or Miſadventure, according to the Nature of the Crime, and the Puniſhment the Law has appropriated to it; and

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and are not to find a Fact Murder, or Treaſon, for being called ſo in the Indictment, if it does not come within the Deſcription the Law makes of thoſe Crimes reſpectively. Then the Priſoner having called the Miniſter of *New York*, and ſeveral other Perſons of Credit, to his Reputation, who teſtified, that he was a Gentleman of a good Character, and well-affected to the Government, Judge *Atwood* proceeded to direct the Jury, informing them, That the Priſoner was not indicted on the 25th of *Edw.* III. but upon an Act of Aſſembly of that Province, confirmed by his Majeſty, who might enact what Offences ſhould be adjudged High Treaſon, as well as the Parliament of *England*; and by this Act, it was made High Treaſon to diſturb the Peace and Quiet of the Government eſtabliſhed there: That the ſigning theſe Libels were Overt-Acts of ſuch a Diſturbance; and the drawing in Soldiers to ſign Complaints againſt their Officers and Superiors, was Treaſon at Common Law, and directed the Jury to find the Priſoner guilty.

Judge Atwood's Directions to the Jury.

Then the Jury withdrew, and the Court adjourned to the ninth of *March*, when the Jury came into Court again, and ſaid, They were divided about the Evidence that had been given; and therefore could give no Verdict: Whereupon Judge *Atwood* declared, he had received ſeveral Letters from the Jury during their Receſs, and anſwered them; and took this Opportunity to inform the Jury, If they doubted, whether the Facts which had been proved were Treaſon, they might, however, find the Priſoner guilty; for he could afterwards move in Arreſt of Judgment, and be relieved, as to Matter of Law.

His ſcandalous Practice with them,

and tyrannical Maxims.

The Priſoner's Counſel anſwered, That it ſeemed very hard, he ſhould thus give the Jury a Handle to find the Priſoner guilty, whether they believed him guilty of High-Treaſon or not; and this only in Expectation of his being relieved upon a Motion in Arreſt of Judgment; and again inſiſted, that they were in this Caſe Judges of the Law as well as of the Fact; and, if they gave up this Point, they would enſlave themſelves and their Poſterity, and be for ever debarred of all Acceſs to their Prince, which would render their Condition worſe than that of the Negroes in their Service.

The Counſel's Reply to the Court.

Then the Court adjourning again till the Afternoon, the Jury brought in their Verdict upon this ſecond Receſs, that the Priſoner was *Guilty*.

The Colonel, by wicked Arts, convicted.

The next Day the Priſoner's Counſel moved in Arreſt of Judgment, That there was not any one Overt-Act, alledged in the Indictment, proved by two Witneſſes as the Statute of 7 *W.* III. required: To which Judge *Atwood* anſwered, That the Jury were ſole Judges of the Evidence; and if there was any Defect in it, that was now ſupplied by the Verdict.

The Court over-ruled the Colonel's Exceptions.

Then the Colonel's Counſel objected, That the Facts laid in the Indictment were not Treaſon; for the Words in the Act of Aſſembly, on which it was founded, were, *If any Perſon ſhall endeavour by Force of Arms, or otherwiſe, to diſturb the Peace and Quiet of the Government, they ſhall be deemed Rebels and Traitors:* And, if the Word *otherwiſe*, as Mr. Solicitor inſinuated, would bring the Priſoner within the Danger of that Act, then every Breach of the Peace, every Quarrel, or trifling Battery, might be conſtrued High-Treaſon; but in Truth, *their Aſſemblies in the Plantations could not make or declare any new Species of Treaſon*, which was not comprehended in 25 *Edw.* III. or ſome ſubſequent Statute.

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The Counſel alſo objecting, that two of the Jury were Aliens, the Court anſwered, this might have been a good Cauſe of Challenge before the Jurors were ſworn; but it was now too late to make that Exception: And, in ſhort, over-ruled every other Exception, how material ſoever; and declared that they were not ſufficient to arreſt Judgment upon. Whereupon Sentence was pronounced upon Colonel *Bayard*, as a Traitor; as it was alſo upon Alderman *Hutchins*, who had been tried and condemned for the like pretended Treaſon; but it ſeems they were afterwards reprieved; and I do not find that either of them were ever executed.

Remarks on Col. Bayard's Trial.

From this Trial we may obſerve, what Tyrants ſome of our Plantation Governors are. They copy after, or rather improve upon, their Maſters: And if any Man dares to oppoſe their Avarice or Ambition, a Plot is frequently trumped up, and a Charge of High-Treaſon brought, to confound and deſtroy the beſt of the King's Subjects, They make or interpret the moſt innocent Actions to be Treaſon; and never want Judges and Lawyers to countenance their Oppreſſions, who ſhare the Plunder of the unhappy Sufferers with them: But this Proſecution, if it be fairly related, exceeds any Thing we ever met with on this Side the *Atlantick Ocean:* They do not only make petitioning the King or Parliament of *England* Treaſon, but they break through all the Rules of Right Reaſon, and Juſtice, to get Men convicted. Beſides many other arbitrary Stretches, we find their pious Chief Juſtice *Atwood* directing the Jury, That, whether the Facts were High-Treaſon or not, they might ſafely find the Priſoner guilty of High-Treaſon; and, by his own Confeſſion, he wrote to and tampered with the Petty Jury, when they were withdrawn to conſider of their Verdict. But, if this be Law in the *Weſt-Indies*, I am ſure it is not ſo in *England*; and the Priſoner's Counſel bravely maintained, that they could conſtitute no new Treaſons, or Methods of Trial, but what were agreeable to the Laws of *England:* If this be ſo, there is no doubt but Colonel *Bayard* had great Injuſtice done him; and it is amazing to me, that *Atwood* was not made an Example of in *England*, who gave it out for Law, *That it was High-Treaſon to prefer a Petition to the Parliament of* England, *when they found themſelves oppreſſed by their Governors.*

But if the *Engliſh* in our Plantations have a Right to be governed by the Laws of *England*, and ſuch By-Laws as are made there that are not inconſiſtent with the Laws of *England*, and ſometimes meet with an honeſt Governor, who ſees the Laws duly executed, what is the Condition of our poor Negroe Slaves in that

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did uſe many indirect Practices, to ſtir up a Mutiny, and procure a Deſertion of his Majeſty's Soldiers in the Garriſon of *Fort-William-Henry*, near the ſaid City of *New York*; and did draw in great Numbers of the ſaid Soldiers, and others, to ſign falſe and ſcandalous Libels againſt his ſaid Majeſty's Government, and ſigned the ſame himſelf: And, amongſt other Things reflecting on the Adminiſtration, had ſuggeſted in the ſaid Libels, *That his Majeſty's Subjects of that Province had been oppreſſed, and the Government rendered cheap and vile in the Eyes of the People; and that the preſent General Aſſembly of that Province was not a lawful Aſſembly*; by which malicious Slanders in the ſaid Libels, he had incited his Majeſty's Subjects of that Province to diſown the preſent Authority, and caſt off their Obedience to his Majeſty; againſt the Duty of his Allegiance, *&c.*

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The Evidence.

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The Priſoner's Defence by his Counſel.

To which Judge *Atwood* anſwered for himſelf and his Brethren; If it was no Crime to petition the King, *It was a Crime for them to petition the Houſe of Commons*; for the King governed by his Prerogative in the Plantations.

The Priſoner's Counſel anſwered, That it was every Day's Practice, as appeared from the Votes, where they would find a Multitude of Addreſſes, Petitions, and Complaints, from the Plantations: That if the Subjects of the Plantations might not petition their King, or the Legiſlature, when they were grieved, their Condition was no better than that of Slaves: And the late Statute to check the exorbitant Actions of Governors in the Plantations, and make them accountable for their Adminiſtration in *England*, would be rendered ineffectual, if ever it ſhould be determined that the Subject had no Right to petition.

That the Act of Aſſembly, on which the Indictment was founded, could make no new Treaſons; and, indeed, that Act did no more than recognize the King and Queen, and declare, That whoever ſhould, by Force of Arms or otherwiſe, diſturb their Government, ſhould be deemed Rebels and Traitors; which they would have been, if that Act had never been made. Had theſe Addreſſes or Petitions been made to the *French* King, indeed, they might have been Treaſon; but, as it was, there was no Colour for conſtruing them to be treaſonable: That the Jury were not only to conſider, whether the Facts laid in the Indictment were proved, but whether there was any Treaſon in them? for otherwiſe, the moſt innocent Action might be called Treaſon in the Indictment, and made a Pretence for cutting off the Subject: But the Jury in theſe and other Capital Caſes, were Judges of the Law as well as of the Fact; as where one is indicted for Murder, and pleads Not Guilty generally, the Jury may bring him in guilty of Murder, Man-ſlaughter, or Miſadventure, according to the Nature of the Crime, and the Puniſhment the Law has appropriated to it; and

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and are not to find a Fact Murder, or Treason, for being called so in the Indictment, if it does not come within the Description the Law makes of those Crimes respectively. Then the Prisoner having called the Minister of *New York*, and several other Persons of Credit, to his Reputation, who testified, that he was a Gentleman of a good Character, and well-affected to the Government, Judge *Atwood* proceeded to direct the Jury, informing them, That the Prisoner was not indicted on the 25th of *Edw.* III. but upon an Act of Assembly of that Province, confirmed by his Majesty, who might enact what Offences should be adjudged High Treason, as well as the Parliament of *England*; and by this Act, it was made High Treason to disturb the Peace and Quiet of the Government established there: That the signing these Libels were Overt-Acts of such a Disturbance; and the drawing in Soldiers to sign Complaints against their Officers and Superiors, was Treason at Common Law, and directed the Jury to find the Prisoner guilty.

Judge Atwood's Directions to the Jury.

Then the Jury withdrew, and the Court adjourned to the ninth of *March*, when the Jury came into Court again, and said, They were divided about the Evidence that had been given; and therefore could give no Verdict: Whereupon Judge *Atwood* declared, he had received several Letters from the Jury during their Recess, and answered them; and took this Opportunity to inform the Jury, If they doubted, whether the Facts which had been proved were Treason, they might, however, find the Prisoner guilty; for he could afterwards move in Arrest of Judgment, and be relieved, as to Matter of Law.

His scandalous Practice with them,

and tyrannical Maxims.

The Prisoner's Counsel answered, That it seemed very hard, he should thus give the Jury a Handle to find the Prisoner guilty, whether they believed him guilty of High-Treason or not; and this only in Expectation of his being relieved upon a Motion in Arrest of Judgment; and again insisted, that they were in this Case Judges of the Law as well as of the Fact; and, if they gave up this Point, they would enslave themselves and their Posterity, and be for ever debarred of all Access to their Prince, which would render their Condition worse than that of the Negroes in their Service.

The Counsel's Reply to the Court.

Then the Court adjourning again till the Afternoon, the Jury brought in their Verdict upon this second Recess, that the Prisoner was *Guilty*.

The Colonel, by wicked Arts, convicted.

The next Day the Prisoner's Counsel moved in Arrest of Judgment, That there was not any one Overt-Act, alledged in the Indictment, proved by two Witnesses as the Statute of 7 *W.* III. required: To which Judge *Atwood* answered, That the Jury were sole Judges of the Evidence; and if there was any Defect in it, that was now supplied by the Verdict.

The Court over-ruled the Colonel's Exceptions.

Then the Colonel's Counsel objected, That the Facts laid in the Indictment were not Treason; for the Words in the Act of Assembly, on which it was founded, were, *If any Person shall endeavour by Force of Arms, or otherwise, to disturb the Peace and Quiet of the Government, they shall be deemed Rebels and Traitors:* And, if the Word *otherwise*, as Mr. Solicitor insinuated, would bring the Prisoner within the Danger of that Act, then every Breach of the Peace, every Quarrel, or trifling Battery, might be construed High-Treason; but in Truth, *their Assemblies in the Plantations could not make or declare any new Species of Treason*, which was not comprehended in 25 *Edw.* III. or some subsequent Statute.

1701. 13 W. III.

The Counsel also objecting, that two of the Jury were Aliens, the Court answered, this might have been a good Cause of Challenge before the Jurors were sworn; but it was now too late to make that Exception: And, in short, over-ruled every other Exception, how material soever; and declared that they were not sufficient to arrest Judgment upon. Whereupon Sentence was pronounced upon Colonel *Bayard*, as a Traitor; as it was also upon Alderman *Hutchins*, who had been tried and condemned for the like pretended Treason; but it seems they were afterwards reprieved; and I do not find that either of them were ever executed.

From this Trial we may observe, what Tyrants some of our Plantation Governors are. They copy after, or rather improve upon, their Masters: And if any Man dares to oppose their Avarice or Ambition, a Plot is frequently trumped up, and a Charge of High-Treason brought, to confound and destroy the best of the King's Subjects, They make or interpret the most innocent Actions to be Treason; and never want Judges and Lawyers to countenance their Oppressions, who share the Plunder of the unhappy Sufferers with them: But this Prosecution, if it be fairly related, exceeds any Thing we ever met with on this Side the *Atlantick Ocean:* They do not only make petitioning the King or Parliament of *England* Treason, but they break through all the Rules of Right Reason, and Justice, to get Men convicted. Besides many other arbitrary Stretches, we find their pious Chief Justice *Atwood* directing the Jury, That, whether the Facts were High-Treason or not, they might safely find the Prisoner guilty of High-Treason; and, by his own Confession, he wrote to and tampered with the Petty Jury, when they were withdrawn to consider of their Verdict. But, if this be Law in the *West-Indies*, I am sure it is not so in *England*; and the Prisoner's Counsel bravely maintained, that they could constitute no new Treasons, or Methods of Trial, but what were agreeable to the Laws of *England:* If this be so, there is no doubt but Colonel *Bayard* had great Injustice done him; and it is amazing to me, that *Atwood* was not made an Example of in *England*, who gave it out for Law, *That it was High-Treason to prefer a Petition to the Parliament of* England, *when they found themselves oppressed by their Governors.*

Remarks on Col. Bayard's Trial.

But if the *English* in our Plantations have a Right to be governed by the Laws of *England*, and such By-Laws as are made there that are not inconsistent with the Laws of *England*, and sometimes meet with an honest Governor, who sees the Laws duly executed, what is the Condition of our poor Negroe Slaves in that

1701. 13 W. III.

Part of the World, who muſt be looked upon however as Subjects, and ought to be under the Protection of the Laws and Government of *England?* How are theſe unfortunate Wretches, far from being the better for our admirable Laws and Conſtitution? No Sort of Cruelty or Oppreſſion, but what is exerciſed upon them without Controul. Though Racks and Tortures have long been baniſhed this happy Iſland, yet are the poor Negroes in our Dominions tortured without Mercy; and this under a Pretence, that they are of a Nature different from their Maſters, and are not to be governed by gentler Methods, which is certainly a falſe and barbarous Notion; for all Mankind in general are alike, and entitled to be treated with Humanity, though there are every where ſome froward Tempers: The Tyrants that exerciſe theſe Cruelties, deſerve the Name of Savages much more than the Negroe Servants that are unfortunately fallen into their Hands: But I ſhall have Occaſion to enlarge upon this Topick in my other Work, and therefore ſhall make no further Reflections on theſe Barbarities here; but conclude my Remarks on this Trial, with my Wiſhes, that either the Court, or Parliament of *Great Britain*, may one Day caſt a favourable Eye on our Plantations, and make ſome Proviſion, that the Subject there may have ſome Benefit from our excellent Laws and Conſtitution, and not be perpetually harraſſed and oppreſſed by rapacious Governors, and neceſſitous Lawyers, ſent thither to repair their ſhattered Fortunes, by fleecing and plundering our Colonies, ſince theſe are, at this Day, (or would be, if they were encouraged), the principal Foundations of our Wealth and Grandeur: And that our Negroe Servants there, if it is not thought fit to ſuffer them to be Chriſtians, and to treat them as ſuch, may, however, be treated with Humanity, and as if they were of the ſame Species, though they differ from us in Complexion.

1701. 13 W. III.

1702. 1 Annæ.

Fuller's *Trial.*

The Trial of WILLIAM FULLER, for *making and publiſhing certain falſe and ſcandalous Libels*, in the Court of *King's-Bench*, on the 20th of *May*, 1702. 1 *Annæ*.

1702. 1 Annæ.

The Information againſt him.

AN Information was preferred againſt the ſaid *William Fuller*, by Mr. Attorney, which ſet forth, That the Defendant, being an Impoſtor, and Common Lyar, and maliciouſly intending the late King *William* and his Subjects to delude and deceive, and Diſcords between the ſaid late King, the Peers, and other great Officers and Subjects of the King to excite, and to bring them into Hatred and Contempt of the ſaid late King: And in order fraudulently to obtain great Sums of Money from the ſaid late King, he, the ſaid *William Fuller*, did maliciouſly write, print, and publiſh a certain ſcandalous and defamatory Libel, entitled, *Original Letters of the late King* James, *to his greateſt Friends in* England, *with the Depoſitions of* Thomas Jones *and* Thomas Widdrington *Eſquires, proving the Corruption lately practiſed to ruin this Nation.* And the Information further ſets forth, That the Defendant did frame and publiſh another falſe and ſcandalous Libel, entitled, *Twenty ſix Depoſitions of Perſons of Quality and Worth*; wherein *Jones* is ſaid to have made Oath, that he diſtributed 180,000 *l.* among King *William*'s Miniſters, and Members of Parliament, in order to corrupt them.

Mr. Attorney opens the Evidence.

Mr. Attorney, Sir *Edward Northey*, in opening the Evidence againſt the Defendant, obſerved, That he had been ſome Time ſetting up for an Evidence, pretending to diſcover a ſecret Correſpondence between the late King *James* and ſeveral Perſons here in *England*. He made an Offer of ſome ſuch Diſcovery about ten Years ago; and he then applied himſelf to the Houſe of Commons, and they gave him Time to produce his Witneſſes; but after all, he could produce none; and the Houſe ordered him to be proſecuted as a Cheat and Impoſtor; and he was proſecuted accordingly, convicted, and ſet in the Pillory. Now, ſome Time laſt Winter, he did apply himſelf to ſome of the late King's Miniſters, and pretended he would produce *Thomas Jones* and *Thomas Widderington*, to make conſiderable Diſcoveries. They heard him; but he could never produce theſe Men before them; and afterwards, having no Encouragement from them, he took on him to publiſh theſe two Books, mentioned in the Information, whereof he ſtands now accuſed. He afterwards applied himſelf to the Houſe of Lords; and they heard what he had to ſay, and gave him Time to produce his Witneſſes; but he could not do it; and thereupon the Lords were pleaſed to direct this Proſecution. Then he applied himſelf to the Houſe of Commons, and they gave him Time likewiſe to produce his Witneſſes; but he could produce none; whereupon they voted him a Cheat, a falſe Accuſer, and an incorrigible Rogue. My Lord, theſe Books were publiſhed with a very malicious Deſign; and no doubt he had other People, who do not now appear, to ſupport him in it; and I doubt not but he would have ſet up Witneſſes to have ſworn whatever he would have them, if he had met with any Encouragement. He has the Impudence to put in the Frontiſpiece of his Books, *Publiſhed by Command*; but being asked in the Houſe of Peers, By whoſe Command? He ſaid, it was by his own Command: And he has publiſhed in the Books, that he would produce Witneſſes to prove the diſtributing of 180,000 *l.* to Perſons in Places of Truſt, and to produce Receipts for the ſame; and he hath an Opportunity now of doing it.

The King's Counſel alſo obſerved, That this was the Man that had applied himſelf to the Parliament, and to ſo many Miniſters of State, pretending to make Diſcoveries in Relation

1702. 1 Annæ.

lation to the Birth of the pretended Prince of *Wales*.

He confeſſes the Libels.

Then the Evidence being called, to prove that *Fuller* handed theſe Libels to the Preſs, he acknowledged, he cauſed both of them to be printed and publiſhed: And ſaid, he could make it appear that what was related in thoſe Books was true; and he would produce *Jones* to prove it, if his Lordſhip would give him his Warrant to indemnify him, without which he durſt not appear.

The Court anſwered, He had made the ſame Pretence before the Lords and Commons, charging a great many Perſons with correſponding with *France*, and affirming, that *Jones* would prove it by undeniable Demonſtration, that he had diſtributed more than 180,000 *l.* by the *French* King's Orders, to ſeveral Perſons employed in the Government, but produced no Manner of Proof of this.

Fuller ſaid, He had been ſummoned before the Lords and Commons, indeed, but they would not grant him their Warrant to bring up *Jones*, and indemnify him; nor could he produce him here without his Lordſhip's Warrant.

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Then the Chief Juſtice obſerved to the Jury, That he had acknowledged the printing theſe Books, and that he had no Manner of Proof of what he advanced in them: And thereupon the Jury, without going from the Bar, found him GUILTY; and he ſentenced to ſtand three Times in the Pillory; to be ſent to the Houſe of Correction, there to be whipped, and kept to hard Labour for five Months; to pay a Fine of one thouſand Marks, and remain in Priſon till it was paid: *And being ſet in the Pillory accordingly, he was ſeverely pelted by the Mob.*

He is convicted.

His Sentence.

Remarks.

This Man equalled the celebrated *Titus Oates* in Impudence, and had as much Cunning and Knavery in his Conſtitution, but did not meet with equal Succeſs: He was, however, more fortunate than *Titus* in one Reſpect; namely, to be believed in his Narrative of the Warming-Pan Plot, by that Right Reverend and Illuſtrious Writer, *Biſhop Burnet*.

1702. 1 Annæ.

Trial of Col. Kirby, &c.

The Trial of Colonel RICHARD KIRBY, Captain JOHN CONSTABLE, Captain COOPER WADE, Captain SAMUEL VINCENT, and Captain CHRISTOPHER FOGG, for *Cowardice and Breach of Orders*, at a Court-Martial, held on Board the *Bredah*, in *Port-Royal* Harbour in *Jamaica*, on the 8th, 9th, 10th, and 12th Days of *October*, 1702, 1 *Annæ*; The Honourable *William Whiſton*, Eſq; Rear-Admiral, Preſident.

1702. 1 Annæ.

A State of the Caſe.

ADMIRAL *Bembow* commanding a Squadron of Men of War in the *Weſt-Indies*, for the Protection of our Trade, and underſtanding that *Du Caſſe* was expected with a *French* Squadron at *Hiſpaniola*, placed himſelf off St. *Martha*, in a Station where it was moſt likely to intercept him; and, according to his Expectations, on the 19th of *Auguſt*, *Du Caſſe* appeared in View, with ten Sail of *French* and *Spaniards*, *viz.* four ſeventy-gun Ships, one of forty Guns, and the other five ſmall Ships: Admiral *Bembow* having ſeven Men of War under his Command, of pretty good Force, engaged the Enemy in the *Bredah*, and was pretty well ſeconded by Captain *Vincent* in *The Falmouth*, and Captain *Walton* in *The Ruſſel*: But the reſt of his Captains refuſing to Fight, and the Admiral being wounded, he was obliged to diſcontinue the Fight, and return to *Jamaica*, where he cauſed the Captains that abandoned him, to be tried at a Court-Martial, for Cowardice and Breach of Orders.

The Evidence.

The Witneſſes for the Queen againſt the ſaid Colonel *Richard Kirby*, were the Honourable *John Bembow*, Eſq; Admiral, two Captains, eight Lieutenants, five Maſters, and five inferior Officers, who teſtified, That the Signal of Battel being given on the 15th of *Auguſt*, at Three in the Afternoon, and the ſaid Colonel *Kirby* having the Van, he appeared ſo backward to engage, that the Admiral was forced to ſend his Boat on Board him, and command him to make more Sail, and get a-breaſt of the Enemy's Van: That the Fight began about Four, and that *Kirby* did not fire above three Broadſides, and then luffed up out of the Line, and out of Gunſhot, leaving the Admiral engaged with two *French* Ships till it was dark.

That the 20th, at Day-light, the Admiral, and *The Ruby*, *George Walton* Commander, were within Shot of all the Enemy's Ships, but Colonel *Kirby* was three or four Miles a-ſtern: Then the Admiral made a new Line, and took the Van himſelf, with a Command to the ſaid *Kirby*, to keep his Line, which he promiſed to do; but did not, keeping two or three Miles a-ſtern.

That the 21ſt, at Day-light, the Admiral was on the Quarter of the 2d Ship of the Enemy, and *The Ruby* on the Broad-ſide very near; and the *Ruby* was ſo much diſabled, that ſhe was forced to be towed off: That this Action laſted two Hours, during which Time *Kirby* lay a-broadſide of the ſtern-moſt Ship, and the Admiral commanded him twice to ply his Broad-ſides, but he fired not a Gun; and threatened to run the Boatſwain through with his Sword, when he repeated the Admiral's Orders to him: And that, had the ſaid *Kirby* and *Conſtable* done their Duty, they muſt have taken or deſtroyed the ſaid *French* Ships.

That the Admiral continued the Chaſe all Night; and that the 22d in the Morning, *Kirby*, with the reſt of the Ships (except *The Falmouth*) was three or four Miles a-ſtern, and never came up, as if they had a Deſign to ſacrifice the Admiral to the Enemy: That by this Means, a *Flemiſh* Ship, in Monſieur *Du Caſſe*'s

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Caſſe's Company, on Board which were all the *French* and *Spaniſh* new Governors, and other Officers, made her Ecape.

That the 23d, the Admiral and *The Falmouth* continued the Purſuit, but *Kirby* and the reſt were three or four Miles a-ſtern.

That the 24th, about Two in the Morning, the Admiral and *The Falmouth* came up with the Stern-moſt of the Enemy, but *Kirby* and the reſt were three or four Miles a-ſtern: That afterwards *Kirby*, being pretty near the ſaid ſtern-moſt Ship of the Enemy, fired above twelve Guns at her, but, fearing a Return from her, ran away, although ſhe was near diſabled, and the other Ships followed him: That the other three *French* Ships ſeeing the Cowardice of the *Engliſh*, although they were three or four Miles Diſtance, bore down upon the Admiral, and reſcued the ſaid diſabled Ship: That this Day the Admiral's Leg was broke, who, notwithſtanding, commanding the Fight to be vigorouſly continued, and ſent to all the Captains to keep their Line, and behave themſelves like *Engliſhmen:* That upon this *Kirby* came on board the Admiral, and diſſuaded him from fighting, and drew up a Paper of his Reaſons for not fighting, which he procured the reſt of the Captains to ſign; and that, during the Fight, he dodged behind the Mizen-Maſt, and diſcouraged his Men; and that he amended the Maſter's Journal of the Fight according to his own Inclinations.

Kirby's *Defence.*

Colonel *Kirby* denied the whole Charge, except his ſigning the aboveſaid Writing, and brought ſeveral Witneſſes to his Behaviour during the Action; but they ſaid little to the Purpoſe. And Colonel *Kirby* being asked, Why he did not fire at the Enemy's ſtern-moſt Ship, which lay point-blank with him the 21ſt of *Auguſt?* he replied, Becauſe they did not fire at him, *for that they had a Reſpect for him:* Which Words he repeated three ſeveral Times during his Trial.

Upon due Conſideration of the Premiſes, and of the great Advantages the *Engliſh* had in Number of Ships, being ſeven to four, and of Guns 122 more than the Enemy; the Court was of Opinion, that he fell under the 11th, 12th, 14th, and 20th Articles of War; and adjudged accordingly, that he be ſhot to Death; hut further decreed, that his Execution ſhould be reſpited till Her Majeſty's Pleaſure were known.

Condemned to be ſhot.

The Witneſſes againſt Captain *Conſtable* teſtified, that he never kept his firſt or ſecond Line of Battel, but acted in all Things as Colonel *Kirby* had done, to the Diſſervice of Her Majeſty, *&c.* and that he was drunk during the Fight.

Conſtable's *Defence.*

He called ſeveral Witneſſes to his Behaviour, who all declared, he kept the Quarter-Deck during the Engagement, and encouraged his Men to fight: That the Meſſage ſent him by the Admiral, was miſunderſtood by himſelf and ſeveral of his Men; and he prayed the Mercy of the Court.

The Court were of Opinion, that Captain *John Conſtable* fell under the 12th, 14th, and 20th Articles of War, and adjudged him to be immediately caſhiered, and rendered incapable of ſerving Her Majeſty, and be impriſoned during Her Majeſty's Pleaſure, and ſent to *England* in the firſt Ship. 1702. 1 Annæ.

The Witneſſes againſt Captain *Wade* depoſed, That he never kept the Line of Battel, fired all his Shot in vain, not reaching half Way to the Enemy; that his Officers telling him of it, he commanded them to fire, ſaying, the Admiral would not believe they fought, if they did not continue the Fire: That his Ship received but one Shot; and that he was drunk during the greateſt Part of the Action: That he ſigned the aforeſaid Paper, *&c.* and during the Fight, arraigned the Courage and Conduct of the Admiral.

Wade's *Defence.*

He denied the Charge called ſome Witneſſes, who ſaid little in his Behalf; and then begged the Mercy of the Court.

The Court was of Opinion, that the ſaid *Cooper Wade* fell under the 11th, 12th, 14th and 20th Articles of War, and adjudged him to be ſhot to Death; but reſpited his Execution till Her Majeſty's Pleaſure was known.

Condemned to be ſhot.

Captain *Samuel Vincent*, Commander of the *Falmouth*, and Captain *Chriſtopher Fogg*, Commander of *The Bredah* (the Admiral,) were tried for ſigning the aboveſaid Paper againſt fighting; and ſaid, in their Defence, That being deſerted in each Day's Engagement by the reſt of the Fleet, they had Reaſon to apprehend their being taken by the Enemy: And Admiral *Bembow* coming into Court, declared that during the ſix Days Fight, the ſaid Captain *Fogg* behaved himſelf with great Courage and Conduct; and that Captain *Vincent* behaved himſelf valiantly, and deſired Leave to come to the Admiral's Aſſiſtance, then engaged with the Enemy, and deſerted by all the reſt of the ſaid Ships; which he did to the Relief of the ſaid Admiral, who otherwiſe had fallen into the Hands of Monſieur *Du Caſſe*.

The Defence of Vincent *and* Fogg.

The Court being of Opinion, that the ſigning of the aforeſaid Paper brought them under the Cenſure of the 20th Article of War, and adjudging Captain *Samuel Vincent* and Captain *Chriſtopher Fogg* to be ſuſpended; but the Execution thereof reſpited till his Royal Highneſs Prince *George* of *Denmark*, Lord High Admiral of *England*, &c. his Pleaſure be known.

Captain *Thomas Hudſon*, Commander of *The Pendennis*, died on Board his ſaid Ship, in the Harbour of *Port-Royal*, in *Jamaica*.

Admiral Bembow *dies of his Wounds.*

Admiral *Bembow* died of the Wounds he received in this Engagement at *Jamaica*, on the Fourth of *November*; and the Queen did him that Juſtice to order the Captains, *Kirby* and *Wade*, who ſacrificed him to the Enemy, to be ſhot to Death; and they were executed accordingly on Ship-board, in *Plymouth* Harbour, not being ſuffered to ſet their Feet on Shore in *England* again, after they had ſo ſhamefully deſerted their Admiral, and diſhonoured their Country: But thus it will ever be, where Men are preferred for Money and Friendſhip, and not for their Merit.

Kirby *and* Wade *executed.*

The

1702. 1 Annæ. Swendſen's Trial.

The Trial of HAAGEN SWENDSEN, SARAH BAYNTON, JOHN HARTWELL, and JOHN SPURR, for *Felony*, at the *Queen's-Bench* Bar, on the 25th of *November*, 1702. 1 *Annæ*.

1702. 1 Annæ.

The Indictment.

THE Indictment charged, That Mrs. *Pleaſant Rawlins*, being a Virgin, and Grandaughter and Heir of *William Rawlins*, Senior, deceaſed, and Daughter and Heir of *William Rawlins*, Junior, deceaſed; and being above the Age of ſixteen Years, and under the Age of Eighteen; and having an Eſtate in Moveables, and in Lands and Tenements, *viz.* in Money, Goods, and Chattels, to the Value of 2000 *l.* and Lands and Tenements of the Value of 20 *l.* *per Annum*, to the Heirs of Her Body, the Priſoners *Haagen Swendſen*, *&c.* (together with one *Thomas Holt*) did, on the 6th Day of *November*, 1702, at the Pariſh of St. *Giles*'s in the Fields, in the County of *Middleſex*, for the Lucre of the Eſtate and Subſtance of the ſaid *Pleaſant Rawlins*, unlawfully, felonioufly, and violently, and againſt the Will of the ſaid *Pleaſant Rawlins*, take and carry her away, with an Intent to marry her to the ſaid *Haagen Swendſen*; who being a Man of a diſhoneſt Converſation, and of none, or a very little Eſtate or Subſtance, did then, and there, by the Help and Procurement of the ſaid other Priſoners, felonioufly marry the ſaid *Pleaſant Rawlins*, and carnally know her: And that the ſaid *Thomas Holt*, the Day and Year aforeſaid, did knowingly and felonioufly receive the ſaid *Pleaſant Rawlins*, and *Haagen Swendſen*, and did incite, aid, and abet the ſaid *Haagen Swendſen* to lie with the ſaid *Pleaſant Rawlins*, and carnally know her, to the Diſpleaſure of Almighty God, the Diſparagement of the ſaid *Pleaſant Rawlins*, the Grief of her Friends, againſt the Queen's Peace, *&c.*

Swendſen *being a Foreigner, a Jury was ſworn, one half whereof were Foreigners.*

Mr. Solicitor opens the Evidence.

Then Mr. Solicitor-General opened the Evidence, and ſaid, That it was formerly reckoned a leſs Crime to ſteal a Fortune of ten thouſand Pounds, than to ſteal the Value of a Shilling of her Money or Goods; but in the third Year of *Henry* VII. to cure this Defect in the Law, a Statute was made, whereby the taking away a Woman, having Lands or Goods, or being an Heir apparent, contrary to her Will, and afterwards marrying her, was made Felony; and upon this Law the preſent Indictment is grounded.

Pleaſant Rawlins was the Daughter of Mr. *William Rawlins*, who having left her a conſiderable Eſtate, appointed *George Bright* and *William Busby* her Guardians. Mr. *Bright* being Dead, the other Guardian, Mr. *Busby*, for the better Education of Mrs. *Rawlins*, placed her under the Care of his Siſter, *Sabina Busby:* Mr. *Busby* and Mrs. *Rawlins* have lodged, about three Years laſt paſt, at the Houſe of the Widow *Nightingale*. *Haagen Swendſen*, with Mrs. *Baynton*, lodged at Mrs. *Blake*'s in *Holbourn*, and there they firſt projected and contrived how they might make a Prey of this young Gentlewoman. The firſt Step they took towards executing this Deſign, was, to get Lodgings at Mrs. *Nightingale*'s Houſe for Mrs. *Baynton*; for which Purpoſe ſhe was to paſs for a Country Gentlewoman, of a plentiful Fortune: One Mrs. *St. John* was ſent to Mrs. *Nightingale* to take Lodgings for Mrs. *Baynton*, commending her to be a very good Woman, and that having the Misfortune of a Law-Suit, and being obliged for that Reaſon to attend it in Town, 'twas her greateſt Care to lodge in ſo reputable a Houſe as Mrs. *Nightingale*'s was: Under this Pretence Lodgings were there taken for her. At her firſt coming, ſhe was forced to put on a Diſguiſe; ſhe ſeemed to live a virtuous Life, that ſhe might ingratiate herſelf into the Favour of the Family, as often as ſhe had an Opportunity of converſing with any of them: She pretended ſhe had a Brother of a good Eſtate, one of the beſt Men in the World; and ſhe hoped he would ſhortly come to Town, that ſhe might ſee him. In a little Time after, came this *Swendſen* (being nothing related to her,) and appeared as her Brother, and frequently viſited her under Pretence of that Relation. But Mrs. *Baynton* was too well known in Town to continue long undiſcovered: Notice was ſoon given to Mrs. *Busby*, of the vicious Life Mrs. *Baynton* had led, and that ſhe was not fit to be in the ſame Houſe with her. Mrs. *Baynton* having diſcovered this, and finding ſhe had no Time to bring about her Deſigns by Frauds and Wiles, and that no other Way was left but open Force, the Priſoner at the Bar and ſhe took Meaſures accordingly; and, in Order thereto, 'twas agreed, that a Writ ſhould be taken out againſt Mrs. *Rawlins:* Mrs. *Baynton* contrives to get Mrs. *Rawlins*, and Mrs. *Busby* into a Coach, and, at a Place appointed, a Signal was given, and the Writ executed; and Mrs. *Busby*, Mrs. *Rawlins*, and Mrs. *Baynton* were all carried in a Coach to the *Star and Garter* Tavern in *Drury-Lane*, where particular Care was taken to ſeparate Mrs. *Busby* and Mrs. *Rawlins*, becauſe, unleſs they did that, they could not hope to accompliſh their Deſigns: Mrs. *Busby* was by Force kept at that Tavern, without any Proceſs againſt her, till the Marriage was over; but Mrs. *Rawlins* was forcibly carried to *Hartwell*'s, the Bailiff's Houſe. Mrs. *Baynton*, pretended to be much concerned for Mrs. *Rawlins*, and went in all Haſte to call ſome of her Friends to be Bail for her. Some Time after Mrs. *Rawlins* had got to *Hartwell*'s, in comes Mrs. *Baynton*, pretending that, by mere Accident, ſhe had diſcovered her being there, hearing her Name as ſhe was paſſing by the Door; that ſhe had been in Search, but could find no Help, and that her laſt Hopes was her dear Brother *Swendſen*, and ſhe doubted not but he would Bail her. He, by Agreement, had been placed near the Bailiffs, and ſo was ſoon found, and brought thither, and

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was very ready to aſſiſt he. In order to her Diſcharge, the Priſoner, the Bailiff, and Mrs. *Baynton*, carry Mrs. *Rawlins* to another Tavern, where they had a Parſon ready for their Purpoſe; and there this young Gentlewoman, through divers Artifices, was conſtrained to marry him.

The Evidence.

The Evidence for the King, being called, Mr. *William Busby*, Guardian to Mrs. *Rawlins*, was ſworn, and teſtified, That ſhe was the Daughter of *William Rawlins*, deceaſed; who left his Eſtate to Dr. *Bright* and this Witneſs, to be ſold for the Payment of his Debts, and Legacies, and gave the Surpluſage to his Daughter, which amounted to about 2000 Pounds; and ſhe had alſo an Eſtate in Lands, of the Value of twenty Pounds a Year; and that ſhe was at this Time near eighteen Years of Age, and unmarried.

Mrs. *Nightingale* depoſed, That Mrs. *Pleaſant Rawlins*, and Mrs. *Busby*, had lodged at her Houſe three Years; and that Mrs. *St. John* came to inquire for Lodgings at her Houſe, for a Country Lady, (which afterwards proved to be Mrs. *Baynton*, the Priſoner:) That ſhe (the Witneſs) enquired of her Character, and was informed, Mrs. *Baynton*, was of a very good Family; whereupon ſhe conſented ſhe ſhould come and board at her Houſe, with her Maid, who happened to be a Neighbour's Daughter: That Mrs. *Baynton* afterwards introduced Mr. *Swendſen*, as her Brother; and deſired he might dine at her Houſe, which ſhe agreed he ſhould, at the Rate of Twelve-pence a Meal: But it was not long before they perceived an extraordinary Familiarity between Mrs. *Baynton* and Mr. *Swendſen*, more than was uſual between Brother and Siſter, and ſhe gave Notice of it to the Family, deſigning to have given Mrs. *Baynton* Warning; but ſhe prevented her, by ſaying, her Affairs permitted her going into the Country, and ſhe deſigned to return thither when her Month was up: She did not go however, pretending a Fellow was come to Town, that intended to put a Cheat upon her, and ſhe muſt ſtay a Week longer, to take out a Statute againſt him.

Mrs. *Busby* teſtified, That her Brother *Busby*, being one of Mrs. *Rawlins* Guardians, put her under the Care of her Husband; who dying about three Years ago, ſhe and Mrs. *Rawlins* went and boarded with Mrs. *Nightingale*, where they had continued ever ſince: And that Mrs. *Baynton*, coming to lodge there lately, introduced Mr. *Swendſen* into their Company, who went for her Siſter's Husband: And Mrs. *Nightingale* agreed, that he might dine there at Twelve-pence a Meal, and he dined there accordingly, nine or ten Times; but at length obſerving an extraordinary Familiarity between Mrs. *Baynton* and *Swendſen*, they began to ſuſpect her Virtue. ----That Mrs. *Baynton* knowing it was their Cuſtom to go to *Oxenden* Chapel every *Friday* Morning, ſaid, ſhe was going to *Golden-Square*, and would take them in her Coach, and ſet them down near the Chapel; and accordingly they accepted of her Offer, and went with her in the Coach; but being come to *Dartmouth-Street*, they heard ſome body bid the Coach ſtop; and immediately *Hartwell*, the Bailiff, crowded into the Coach, and laying hold of Mrs. *Rawlins*, ſaid, his Concern was with that Lady and the Witneſs, and carried them all to the *Star and Garter* Tavern in *Drury-Lane:* That ſhe intreated him to carry them to *Fleet-Street*, where ſhe had Friends; but he was angry, and would not hear of it; and Mrs. *Baynton* left them, and pretended ſhe would go ſee for her Friends: Whereupon ſhe and Mrs. *Rawlins* were in a great Conſternation; and ſhe (the Witneſs) took Mrs. *Rawlins* by the Arm, and ſaid, She would live and die with her; but the Bailiffs forced them aſunder, and carried her (the Witneſs) to another Room; and as ſhe was going, ſhe put her Head out of a Window, and cried, Murder! which brought ſome of the Neighbours in; but the Bailiffs telling them, it was an Arreſt, they would not meddle in it; however, a little Boy offering to go of an Errand for her, ſhe ſent for two Gentlemen, who came to her; and after a little Time, the Bailiffs left her (the Witneſs) with the Gentlemen, without taking any Bail; and ſhe never ſaw Mrs. *Rawlins* again, till the next Day at Noon.

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Mrs. *Berkley* teſtified, That ſhe demanding of Mr. *Swendſen*, when he was apprehended, If that wicked Woman, Mrs. *Baynton*, was his Siſter? He anſwered, No; but he had gained his End, in making her a Tool to his dear Wife: He would gratify her for what ſhe had done, and put her away on *Monday*, and ſee her no more.

Blake depoſed, That Mr. *Swendſen* and Mrs. *Baynton* lodged at his Houſe in *Red-Lion-Street*, ſix or ſeven Months: That he had known Mrs. *Baynton* theſe twelve Years; ſhe was no Country Lady, but worked for her Living, and went from his Houſe five or ſix Weeks before this Matter happened, and he never ſaw any Harm by her.

Wakeman, the Bailiff's Follower being ſworn, teſtified, That *Hartwell* took him and *Spurr* to *Stretten-Grounds*, where they ſtopped a Coach, and *Hartwell* went into the Coach, and arreſted the Lady; and then they drove to the *Star and Garter* in *Drury-Lane* and from thence ſhe was carried to *Hartwell*'s Houſe: That one Mr. *Holt* took this Witneſs from *Hartwell*'s Houſe to the *Five Bells* in *Witch-Street*, where he ſaw Mr. *Swendſen*, the Priſoner; and *Holt* made him drink, and enquired after the Lady they had arreſted: That returning to *Hartwell*'s Houſe again, he was told, the Lady was carried to the *Vine-Tavern* in *Holbourn*, whither he went, and ſaw Mr. *Swendſen* there and the Lady was looking out of a Window over-againſt the Tavern; he did not ſee her at that Tavern: And, it being demanded, If they had any Proceſs againſt Mrs. *Busby*, he anſwered, None at all.

Mrs. Rawlins's Evidence.

Then Mrs. *Pleaſant Rawlins* was ſworn, and gave the following Evidence.

I was in a Coach, going to *Oxenden* Chapel with Mrs. *Busby* and Mrs. *Baynton*, and three Bailiffs came about the Coach, and carried us to the *Star and Garter* Tavern in *Drury-Lane:* they forced me up ſtairs into a back Room,

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Room, but we got into a forward Room; we had not been there long, before they parted Mrs. *Busby* and me: Mrs. *Baynton* was gone for our Friends, as ſhe pretended. I was in a very great Fright; and Mrs. *Busby* ſaying, We will die together, they took me by Force from her; *Hartwell* ſwore a great Oath, and thruſt me down Stairs, and forced me out of a back Door into an Alley. When he went to put me into a Coach, I cried out Murder! then he threatened to put me into *Newgate*. He carried me to his own Houſe, where Mrs. *Baynton* came in, pretending, ſhe heard my Name as ſhe was going by; ſhe ſaid, ſhe would ſend for her Brother, who ſhould bail me. He came, and we went to the *Vine*-Tavern in *Holbourn*, where I was an Hour or two before I heard any thing of Marrying; but after we had dined, ſhe begged of me to have her Brother; and ſaid, If I did not marry him, I ſhould be ruined: I deſired my Friends might be ſent for; but they would not admit of it. She asked me to let her ſee the Ring off my Finger; which I refuſing, ſhe forced it from me, and ſaid, ſhe would go and get a Wedding Ring made by it. When they brought the Ring, they ſaid to me, Will you be married or no? I ſaid, I would not, without the Conſent of my Friends: They ſaid, if I did not, I ſhould be ruined for ever; and they brought a Parſon and a Clark up Stairs: The Parſon ſaying, I hear there is a Couple to be married, asked no Queſtions, but told me, If I did not marry this Gentleman, I ſhould be ſent to *Newgate:* So, with many Threats and Perſuaſions, they at laſt prevailed with me to marry; I was forced to marry him out of Fear, not of going to *Newgate*, but of being murdered. It was about Three in the Afternoon when I was married, and, about Candle-Light, they carried me to *Blake*'s Houſe, in *Red-Lion-Fields:* They thruſt me up Stairs, and ordered to have a Bed ſheeted. Mrs. *Baynton* bid me undreſs, and go to Bed: I ſaid, I would not: Then ſhe ſaid, ſhe would pluck the Clothes off my Back; and, at length, ſhe forced me to go to Bed: It was *Saturday* Morning before I was releaſed; then ſome of my Friends came to the Place where I was.

The Lord Chief Juſtice demanding of *Swendſen*, What Anſwer he gave to this Evidence? He ſaid, He was very much unprepared, having had ſo little Time allowed him, and deſired Counſel: The Court anſwered, He could not have Counſel; and as for Time, he had been told, If he could have ſhewn any Cauſe, his Trial ſhould have been put off: Then he begged very importunately, that his Wife (Mrs. *Rawlins*) might ſtand by herſelf; intimating, ſhe would be prompted what to ſay by the Company about her: The Counſel anſwered, He did this on Purpoſe to frighten her; however, the Court at length conſented ſhe ſhould remove to another Place: After which, *Swendſen* ſaid, The firſt Time he was at Mrs. *Nightingale*'s, he was deſired by Mrs. *Busby* and Mrs. *Baynton* to make a Bowl of Punch; which he did, and they were very merry over it: Then he invited them to go on Board a Ship; which they all did, and, in a ſhort Time, became very well acquainted, inſomuch, that they invited him the Week following to partake of a Treat; accordingly he went, and met one Mr. *Pugh* there, who, at that Time, courted Mrs. *Rawlins*; but the little Time he (the Priſoner) was acquainted with her, he diſcerned ſhe had a Kindneſs for him, as he had for her: That he thereupon told her, he could not be eaſy while ſhe ſuffered *Pugh* to kiſs her; ſhe bid him be eaſy, and ſaid, it ſhould be remedied.

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Swendſen's *Defence.*

Here Mrs. *Rawlins* denied ſhe ever ſaid any ſuch Words: Then *Swendſen* demanded, If ſhe did not ſay, ſhe would not eat a Bit, if he did not ſit by her? This ſhe alſo denied; whereupon he demanded, If ſhe did not give him ſome Encouragement? She anſwered, She knew of no ſuch Thing.

Then the Chief Juſtice told her, ſhe ought to ſpeak the Truth, becauſe his Life depended on it; and asked her, If ſhe ever did admit his Courtſhip in order to marry him: She anſwered, She remembered no ſuch Thing, ſhe did not know ſhe ſhewed him any more Kindneſs than the reſt of the Family did; nor was ever in his Company alone.

Then the Priſoner ſaid, That once after Dinner, ſhe heaped peeled Walnuts upon his Plate, till the Company took Notice of it: That at other Times ſhe kiſſed him, and ſqueezed him by the Hand; and when he talked of marrying her, ſeemed very well pleaſed: But ſhe denied all this, and ſaid, ſhe never was with him alone: And Mrs. *Busby* declared, She ſaw nothing of all this. Then he called a Picture-Drawer, to give an Account of ſome amorous Converſation between them, when they came to his Houſe to ſee Mrs. *Baynton*'s Picture that was drawing; but the Painter could teſtify nothing of that Nature: Whereupon the Chief Juſtice told him, He was in a great deal of Danger, if he could produce no better Witneſſes.

The Priſoner proteſted, he knew nothing of the Arreſt, directly or indirectly, till he ſaw her in the Bailiff's Houſe: And, that ſhe married him with as much Freedom as a Woman could.

Then the Chief Juſtice bid her give an Account, how ſhe was carried from the Bailiff's Houſe.

Mrs. *Rawlins* anſwered, When I was at *Hartwell*'s, the Bailiff's Houſe, Mrs. *Baynton* pretended to come by accidentally, and that ſhe heard my Voice; and came in, and ſaid, How do you do, Mrs. *Rawlins?* You know how I do, ſaid I. She pretended to help me; and propoſed to go to her Brother to bail me; and he came, and I was carried from thence in a Coach to the *Vine*-Tavern, and *Swendſen* went in the Coach with her.

The Priſoner's Witneſſes.

The Priſoner then called the Parſon that married them, for a Witneſs, who depoſed, That a Gentleman fetched him and his Clark from the *Fleet*, to the *Vine*-Tavern in *Holbourn*; and being introduced to the Priſoner, he asked him, What he was to do? And he anſwered, to marry him to that young Gentlewoman: That he read the Licenſe, and found it a true Licenſe; and asking the Lady her Name, found it to be the ſame with that in the Licenſe: Then he asked her, If ſhe was willing to be married? and ſhe ſaid, ſhe was willing; and

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and another Gentlewoman was with her, that ſaid ſhe was her Siſter: Whereupon he ſaid, If you conſent, and your Siſter is willing, here is a Licenſe, and I believe there is no Danger in marrying you. The Chief Juſtice demanded, If the Licenſe directed the Marriage ſhould be performed in a Tavern? and if he took the Queen's Duty? He anſwered, No; but he returned their Names to the Superviſors; he never married any in a Tavern before, and would never do it again; and acknowledged, he ſtaid and dined with the new-married Couple.

Then he called Mr. *Cotchet* and Mrs. *Cotchet* of the *Vine*-Tavern, as Witneſſes; and being asked by the Chief Juſtice, If they heard any Noiſe, or ſaw any Violence uſed to the young Woman, they ſaid, they obſerved none: That they were ſhewn a lower Room when they came in, but choſe to go up Stairs; and ſoon after Mr. *Holt*, the Vintner, came down and went out; and that *Hartwell*, the Bailiff, told them, it was an Arreſt, and that the Parſon was to be Bail for the Lady; but afterwards they ſaid, there was a Wedding above, and they admired at it, that there ſhould be a Wedding and Bailiffs there: And after all was over, the Gentleman and the Lady went out at the Backdoor, and took Coach, and the Lady did not ſeem diſcontented.

Sarah Walker, the Cook at the *Vine*, depoſed, That when the young Gentlewoman came in, ſhe heard there was to be a Wedding, and ſhe went up Stairs to receive Directions for the Supper, and the young Lady ſat at one End of the Room, and ſeemed very melancholy; and when ſhe asked her what Sauce ſhe would have, ſhe ſaid, ſhe would eat nothing at all; but when ſhe went away, ſhe did not ſeem melancholy.

Blake, the Man's Daughter where ſhe was put to Bed, depoſed, That they came to their Houſe about three or four o'Clock in the Afternoon, and went to Bed about two Hours after, and roſe again at ſeven in the Evening, and went away; and that ſhe helped to undreſs her when ſhe went to Bed, the Lady deſiring ſhe might wait on her; and that Mr. *Swendſen* told her, the young Lady was his Wife.

Blake himſelf being called as a Witneſs, had asked what he knew of Mrs. *Baynton*, anſwered, that he had known her twelve Years, and it was reported ſhe was married to Mr. *Baynton*, who died about four Years ſince; but confeſſed ſhe lay in at his Houſe about four Months ago. And being asked, Why, when he knew ſhe was ſuch a Woman, and brought a Gentlewoman to his Houſe, and ordered a Bed to be made, he would admit of it? *Blake* anſwered, he did not know it was a clandeſtine Thing.

The Conſtable, who apprehended *Swendſen*, teſtified, That he had a Warrant to take up the Men that ran away with the young Gentlewoman, and he went with ſome Gentlemen to Mr. *Blake*'s Houſe, in *Red-Lion-Street*, where he found Mr. *Swendſen* and the Lady; and one of the Gentlemen (her Friend) asked her, if ſhe was married? She anſwered, Yes, there is my Husband, and ſeemed very much ſatisfied: Whereupon he wiſhed her Joy, and ſaid, if ſhe pleaſed to go with him to the Recorder's, there was her Guardian to approve what ſhe had done; but ſhe would go to the next Juſtice of Peace.

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Here the Priſoner obſerved, that ſhe ſaid to the Conſtable, *I am very well content with the Marriage, and this is the Ring that married us.* Mrs. *Rawlins* anſwered, ſhe did not know but ſhe might ſay ſo, for ſhe was not in her Senſes, and did not know what ſhe ſaid: And the Court demanding, If ſhe had been in Bed then? ſhe anſwered, Yes, they had been in Bed about an Hour; that Mrs. *Baynton* threatened her, and ſaid, ſhe muſt own him for her Husband, or they were all ruined.

Then Juſtice *Barber* teſtified, That on *Friday* the 6th Inſtant, the Priſoner, the Lady, and another came to his Houſe, in *York-Buildings*, and the Priſoner in particular deſired he would adminiſter a voluntary Oath to her, whether ſhe was married to him; but he did not think he had any Thing to do to give ſuch an Oath, and therefore did not tender it, and perceived ſhe was in great Diſorder; that they came to him in a Coach, and had then no Officer with them; and that ſhe did ſay, voluntarily, *ſhe was married with her own Conſent.*

Bulkley, the Priſoner's Barber, depoſed, That he and the young Lady called at his Door, in *York-Buildings*, in a Coach, on the 7th of *November*, and the Priſoner told him he was married, and that was his Wife; and he wiſhing them much Joy and Happineſs: She anſwered, ſhe did not queſtion it, ſince what ſhe had done was with her own voluntary Conſent.

Hudſon, *Blake*'s Man, teſtified, That Mr. *Swendſen* came with the Lady to their Houſe on *Saturday* Morning; and Mr. *Swendſen* ſaid, That was his dear Wife; and ſhe ſaid, This is my dear Husband; and took him about the Neck and kiſſed him.

Mr. *Green* depoſed, That he was with them before the Recorder, and the Lady owned, ſhe was married to the Gentleman by her own Conſent, without Force or Compulſion; and the Recorder anſwered, he was afraid ſhe was drawn in by that Spark, a Bully of the Town; and Mr. *Swendſen* and the Witneſs being ſent out, he did not know what ſhe ſaid afterwards.

Then the Priſoner called ſeveral to his Reputation. One ſaid, he had dealt with him for 3000 *l.* Another ſaid, he had a good Character in *Norway*, and ſeveral Ships were conſigned to him; and a third ſaid, he knew him, and he was eſteemed worth 10,000 Dollars in *Norway*, and held to be a very honeſt Man. *See the Conviction, Sentence, and Execution, after Mrs.* Baynton's *Trial.*

Here Mr. Solicitor General obſerved, That the Priſoner had given no Anſwer to the principal Part of their Evidence, namely, the Force; for if the taking and detaining Mrs. *Rawlins* was by Force, as the Witneſſes teſtified, and if ſhe was married while ſhe was under that Force, no ſubſequent Act or Conſent of hers could leſſen the Offence, if the Jury ſhould give Credit to the Priſoner's Evidence, and believe her Conſent was real.

She had confeſſed, indeed, that after ſhe had been hurried from Tavern to Tavern, ſhe did declare he was her Husband, and that ſhe conſented to the Marriage; but what afterwards happened

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happened plainly ſhewed it was through Fear, and nothing elſe: Had ſhe really conſented to the Marriage, why was ſhe carried to the Juſtice of Peace, to take an Oath, that ſhe was married by her own voluntary Conſent? While the Priſoner held her by the Hand before the Recorder, ſhe confeſſed ſhe married with her free Conſent; but as ſoon as the Priſoner was withdrawn ſhe burſt out into a Flood of Tears, and declared ſhe was married by Conſtraint: He obſerved alſo from the Licenſe, that the whole Matter was of the Priſoner's contriving, for the Licenſe bore Date three Weeks before the Time of the Marriage, which ſhewed how long they had waited for an Opportunity to accompliſh this Deſign; and when he took out the Licenſe he made Oath her Age was Twenty-five, and his own Thirty-five. Then the Queen's Counſel called a Witneſs, to teſtify what the Lady ſaid before the Recorder; who depoſed, That while Mr. *Swendſen* held her by the Hand ſhe owned the Marriage, but when he was withdrawn ſhe threw herſelf upon him (the Witneſs), and deſired him to ſtand by her, for ſhe was undone; and giving much the ſame Evidence ſhe had done in Court, ſhe ſaid what ſhe had done was all by Force, and out of Fear.

Then Mr. *Taylor* teſtified, That when the Priſoner took out the Licenſe, he made Oath the Lady was Twenty-five; and that the Licenſe was dated the Day he took it out.

The Chief Juſtice then ſummed up the Evidence, and gave the following Directions to the Jury.

1. You are to know, that if ſhe was taken away by Force, and afterwards married, tho' by her Conſent, yet is he guilty of Felony: For it is the Taking away by Force that makes the Crime, if there be a Marriage, tho' by her Conſent.

2. In the next Place it is to be obſerved, that ſhe was taken away by Force, and a Stratagem was uſed to give an Opportunity thereunto, and the Arreſt was but a Colour.

3. You may conſider upon the Evidence, how far the Priſoner was concerned in the firſt Force. It is true, he was not at the Arreſt, and did not appear until ſhe was brought to *Hartwell*'s Houſe; and under that Pretence of Bailing her, ſhe was carried to the *Vine*-Tavern, where there was a Parſon ready, and the Marriage was had in ſuch a Manner as you have heard: Now it is left to you to determine, whether the Marriage was not the End of the Arreſt? And if ſo, how it could be poſſible for ſuch a Force to be committed to effect the Priſoner's Deſign, and he not privy to it?

4. If it can be imagined he was not privy to the colourable Arreſt, yet ſhe was under a Force when he came to her at *Hartwell*'s Houſe, and from thence ſhe was carried by Force into the *Vine*-Tavern, where ſhe was married: That is a forcible Taking by him at *Hartwell*'s Houſe: And though when ſhe was at the *Vine*-Tavern, ſhe did expreſs her Conſent to be married; yet it appears, even then, ſhe was under a Force, and had no Power to help herſelf: She was alſo under a Force when ſhe was carried to *Blake*'s, and put to Bed: Nay, when ſhe was carried to the Juſtice Peace, even then ſhe was under a Force; and all that ſhe ſaid was not freely, but out of Fear: Such a Force would avoid any Bond, for ſhe was under Impriſonment. But, however, if the firſt Taking was by Force, and ſhe had conſented to the Marriage, the Offence is the ſame; it is Felony.

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After the Charge Mr. *Swendſen* deſired his Wife might be asked, Whether ſhe did not, upon her Knees, ſwear ſhe went away from him as good a Maid as ſhe came to him.

The Chief Juſtice anſwered, That was a Queſtion need not be asked, ſince the Marriage was ſo plainly proved: This was ſufficient to bring him within the Statute, though the Marriage was never conſummated.

Baynton's *Trial.*

After the Trial of Haagen Swendſen, Sarah Baynton, John Hartwell, *and* John Spurr, *were ſet to the Bar, and a Jury charged with them; being indicted for aiding and aſſiſting the ſaid* Haagen Swendſen, *to bring about and accompliſh the ſaid forcible Marriage with Mrs.* Pleaſant Rawlins. (The Indictment will be found in the preceding Trial.)

In opening the Indictment and the Evidence, Mr. Solicitor obſerved, That the Law, to ſhew how odious ſuch Offences were, and to deter all Perſons whatever from committing them, had made no Difference between the Principals and Acceſſaries; the Abetters, Procurers, and Contrivers were declared and adjudged Principal Felons.

The Evidence.

The Evidence being called, Mrs. *Busby* depoſed, as ſhe had done at the former Trial, That Mrs. *Rawlins*'s Father left her about 2,000 *l.* and her Grandfather 20 *l. per Annum* in Lands.

Mrs. *Nightingale* teſtified, That Mrs. *Busby* and Mrs. *Rawlins* had lodged at her Houſe three Years, when Mrs. *Baynton* came under the Character of a Country Gentlewoman, and took Lodgings at her Houſe, and introduced *Swendſen* as her Brother. (*As in* Swendſen's *Trial.*)

Mrs. *Busby* alſo teſtified, That ſhe and Mrs. *Rawlins* were arreſted in a Coach, and carried to the *Star and Garter* in *Drury-lane*, (*as at the former Trial*): And the Court demanding, if Mrs. *Baynton* and *Hartwell* were at the Tavern with them, ſhe anſwered Mrs. *Baynton* was there, and pretended to go for Friends to bail them; but did not come again while ſhe was there. That *Hartwell* forced the young Lady from her at the Tavern; and when ſhe put her Head out of the Window, and cried after her, *Spurr* ſaid, What have you got by your Bawling? We are better known here than you are. This was the firſt Notice ſhe took of *Spurr*, but ſhe underſtood he rode behind the Coach that brought them thither, and that he was left to keep her, when Mrs. *Rawlins* was forced away from her.

Wakeman, the Bailiff's Follower, depoſed, That *Hartwell* employed him in this Arreſt, and told him the Writ was againſt Mrs. *Rawlins*: That *Spurr* ſtopped the Coach, and *Hartwell* ordered it to drive to the *Star and Garter* Tavern; and when they were there, *Hartwell* came to the young Lady, and ſaid, You muſt go to my Houſe; and ſhe ſaid, O Lord, don't part us; But he forced her away, put her into a Coach, and carried her thither; and

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from *Hartwell*'s Houſe ſhe was carried to the *Vine*-Tavern in *Holbourn*. The Court demanding, if they had any Writ againſt Mrs. *Busby*, *Wakeman* anſwered, No; and That againſt Mrs. *Rawlins* was but for 20 *l.* though *Hartwell* ſaid, it was for 200 *l.* And that when he went away, he left *Spurr* and *Hartwell* at the *Vine*-Tavern.

Then Mrs. *Rawlins* teſtified, That ſhe was arreſted on the 6th of *November*, as ſhe was going in a Coach to *Oxenden* Chapel, and carried to the *Star and Garter* Tavern; where *Hartwell* forced her from Mrs. *Busby*, carried her to his own Houſe, and from thence to the *Vine*-Tavern in *Holbourn*, as ſhe had done at the Trial of *Swendſen*.

Hartwell demanding of Mrs. *Rawlins*, which of them was *Hartwell*; ſhe anſwered, that his Name was *Hartwell*; and that he took her about the Middle, forced her away, and drove her down Stairs; and when ſhe cried out Murder, he ſaid, if ſhe did not hold her Tongue he would ſend her to *Newgate* that Minute: And having her at his Houſe in *Witch-Street*, Mrs. *Baynton* came in, pretending ſhe heard her Name as ſhe paſſed by, and ſaid ſhe would ſend for her Brother to bail her; whereupon ſhe went out, and returned with her Brother *Swendſen* in half a Quarter of an Hour: After which, Mrs. *Baynton*, her Brother, and *Hartwell*, carried her in a Coach to the *Vine*-Tavern in *Holbourn*, and *Holt* was there for the other Bail: They were willing to take him, but were very ſcrupulous about *Swendſen*'s being Bail; and told her, in ſhort, ſhe muſt marry *Swendſen*, and that would put an End to it. Mrs. *Baynton* ſaid, if ſhe did not marry her Brother, ſhe muſt go to *Newgate*: That ſhe deſired her Friends might be ſent for, but they would not permit it; and when ſhe refuſed to let Mrs. *Baynton* have her Ring off her Finger, ſhe forced it from her, and ſaid, ſhe would go and get a Wedding-Ring made by it. That *Holt* brought in the Parſon and Clerk, and the Parſon asked no Queſtions, but told her, if ſhe did not marry that Gentleman ſhe ſhould be ſent to *Newgate*; and with many Threats ſhe was at length prevailed on to marry *Swendſen*; but ſhe did it not out of Fear of going to *Newgate*, but of being murdered. That ſhe did not ſtay at the *Vine* a quarter of an Hour after ſhe was married, but *Swendſen* and Mrs. *Baynton* carried her to *Blake*'s Houſe in *Holbourn*, where *Baynton* and *Blake*'s Daughter undreſſed her, and ſhe was in Bed there an Hour or two. The Court demanding, if ſhe ſaw *Hartwell* at the *Vine*-Tavern before ſhe was married; ſhe ſaid, Yes; *Hartwell* ſaid, he would conſider with Mrs. *Baynton* about the Bail, and they all went out and left her alone, and Mrs. *Baynton* returned, and told her they refuſed the Bail.

Baynton's *Defence.*

Mrs. *Baynton*, being directed to enter upon her Defence, demanded of Mrs. *Rawlins*, If ſhe did not ſay, when the Family was at Church, ſhe wiſhed Mr. *Swendſen* was there? and Mrs. *Rawlins* anſwering, ſhe did not remember ſhe ſaid ſo; Mrs. *Baynton* asked her, If ſhe did not come to her Bed-ſide, and kiſs and hug her, and talk with Pleaſure of Mr. *Swendſen*? Mrs. *Rawlins* anſwered, may-be ſhe might do ſo; but ſhe did not ſpeak it with a Deſign to have him.

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Mrs. *Baynton* demanded, If ſhe did not ſay, ſhe had a great deal of ill Uſage, and that ſhe lived more like a Servant than any Thing elſe? Mrs. *Rawlins* anſwered, ſhe did not know but ſhe might: And the Chief Juſtice demanding, Why ſhe did ſo? ſhe anſwered, ſhe could give no Account of it.

The Chief Juſtice then asked her, If ſhe bid Mrs. *Baynton* tell *Swendſen*, that ſhe knew a Gentlewoman at her own Diſpoſal, that would make him a very good Wife? Mrs. *Rawlins* anſwered, ſhe might ſay ſhe wiſhed her Brother a very good Wife, but ſhe did not ſpeak it with a Deſign to marry her Brother; but was reſolved to take Advice of her Friends.

The Court then demanded, If ſhe ever told Mrs. *Baynton* ſhe wiſhed herſelf Mr. *Swendſen*'s Wife? She anſwered, ſhe could not tell whether ſhe did or not: But being asked, if ſhe told Mrs. *Baynton* that, notwithſtanding what ſhe ſaid of Mr *Swendſen*, ſhe would never marry without the Conſent of her Friends? She anſwered, ſhe often ſaid, ſhe would never marry without their Conſent.

It being demanded, If there had been any Courtſhip carried on between Mr. *Swendſen* and her? She ſaid, no more Courtſhip to her than to all the Family: Being asked, if ſhe did not ſay ſhe would have no body but *Swendſen*? She denied ſhe ever ſaid ſo. Then Mrs. *Baynton* deſired ſhe might be asked, Whether ſhe conſented to be taken away, directly or indirectly? Mrs. *Rawlins* replied, it was all without her Knowledge; ſhe never conſented to it.

Being asked, if ſhe did not ſend back Mr. *Pugh*'s Letter, and deſire him to come no more, for ſhe would have nothing to ſay to him? She anſwered, ſhe did ſend back his Letters, but did not remember ſhe ſaid any Thing to Mrs. *Baynton* about it.

The Court asking, Why ſhe ſent his Letters back? She ſaid, It was not upon Mr. *Swendſen*'s Account; but upon ſome unhandſome Things they had heard of him: And Mrs. *Busby* ſaid, They were ſent back by their Advice.

The Chief Juſtice again ſolemnly demanded of her, by the Oath ſhe had taken, If ſhe conſented to her being taken away after the Manner ſhe was, or gave any Encouragement to Mr. *Swendſen*? She anſwered, No; ſhe did not know ſhe gave him any Manner of Encouragement.

Then Mrs. *Baynton* called her Maid *Betty*, for a Witneſs, if Mrs. *Rawlins* did not ask her ſeveral Times of Mr. *Swendſen*, and wiſh he would come and dine with them? And *Betty* anſwered, She never heard her but once.

Swendſen's *Jury come into Court, and propoſe ſome Doubts.*

Here *Swendſen*'s Jury returned into Court, and *Johnſon*, a *Dane*, who was one of the Jury, ſaid, they did not find any Evidence, that Mr. *Swendſen* was privy to the Arreſt. The Chief Juſtice anſwered, Did not he go to *Hartwell*'s Houſe, and from thence, while ſhe was under a Force, went with her to the *Vine*-

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Vine-Tavern, where he married her? Did not he take Advantage of the Force, and was that Force to any other Purpoſe but to compel her to marry him? There was no Cauſe of Action, either againſt Mrs. *Rawlins* or Mrs. *Busby*. And *Johnſon* ſtill objecting, there was no Violence uſed by *Swendſen*; the Court anſwered, if he was preſent when Violence was uſed, then was Violence uſed by him: It appeared very evident ſhe was under a Force before ſhe was married, when ſhe was married, all Night after, and the next Day, when ſhe was at the Recorder's.

Johnſon replied, He did not believe Mr. *Swenſden* employed the Bailiffs: To which the Court anſwered, If he did not ſet them to work, yet his Act afterwards made it as bad as if he had actually imployed the Bailiffs: Whereupon *Johnſon* ſaid, he agreed with the reſt; and the Foreman ſaid, They were now all agreed in their Verdict, that *Swendſen* was GUILTY.

Swendſen *convicted.*

Then Mrs. *Baynton* proceeded in her Defence, and ſaid to Mrs. *Rawlins*, Did not you undreſs yourſelf at Mrs. *Blake*'s? She anſwered, You undreſſed me: And being asked, If ſhe did not ſay to Mr. *Swendſen*, when ſhe was in Bed, Come to Bed, my Dear Husband, you muſt love no body in the World but me; and that ſhe loved him above all Men in the World? She anſwered, *No, Mrs.* Baynton, *I did not, I have taken an Oath this Day, and I ſaid no ſuch Things.*

Mrs. *Baynton* ſaid, That Mrs. *Rawlins* would have written Letters to Mr. *Swendſen*; but ſhe would not let her, and always acted as a Friend to her.

The Chief Juſtice anſwered, If ſhe had no Deſign but for her Good, why did ſhe go to lodge at Mrs. *Nightingale*'s, under Pretence ſhe had a Law-Suit? and why did ſhe carry her out in the Coach in order to be arreſted? Mrs. *Baynton* replied, She had carried her out in a Coach, and ſet her down ſeveral Times. And then ſhe demanded of Mrs. *Rawlins*, If ſhe did not ſeveral Times deſire to ſit next to *Swendſen* when they were at Cards, and ſent for Walnuts and Apples to treat him? To which ſhe ſaid, She did indeed ſend for Walnuts and Apples; but not to pleaſure Mr. *Swendſen*.

The Court demanding of *Baynton*, Why ſhe ſaid Mr. *Swendſen* was her Brother? She ſaid, He was her Brother by Adoption: And asked Mrs. *Rawlins*, if ſhe did not give Mr. *Swendſen* ſo much Encouragement as to kiſs him, and go between his Legs? Mrs. *Rawlins* thereupon ſaid, She took it upon her Oath, ſhe never did ſo: And being asked, If ſhe did not love him? She ſaid, No; not well enough to make him her Husband.

Then the Court asked Mrs. *Baynton*, How ſhe lived, and if ſhe had not a Child about four Months ago? She anſwered, She was married, and could prove it; but ſhe did not think it proper, for ſome Reaſons: And as to getting her Living, ſhe had a Siſter in *Barbadoes* that was very kind to her.

Then the Chief Juſtice demanded of *Hartwell*, Who ordered him to take out the Writ againſt Mrs. *Rawlins*, at the Suit of *Jones?* *Hartwell* anſwered, It was Mr. *Holt*, who kept the *Mitre* Tavern at *Weſtminſter*; and being at Mr. *Holt*'s Houſe, Mrs. *Baynton* came in, and gave him Money for the Writ; and he ſent *Spurr*, his Follower, for it: That when he carried them to the *Star and Garter* Tavern, Mrs. *Baynton* bid him take Care of his Priſoner, Mrs. *Rawlins*, and take her with him to his Houſe, or he would loſe his Money; and thereupon he carried her to his Houſe, and having Buſineſs elſewhere, he left her with his Wife; and when he came Home again, he found Mr. *Swendſen* and Mrs. *Baynton* there, drinking a Pint of Sack: And they told him, if he would go to the Tavern, the Buſineſs ſhould be made up; and they went in a Coach to the *Vine*-Tavern, where the Matter was made an End of; but he knew of no Writ againſt Mrs. *Busby*. Then he called a Witneſs, who teſtified, That Mrs. *Baynton* confeſſed before the Recorder, ſhe imployed *Hartwell* to ſue out the Writ againſt Mrs. *Rawlins*, and gave him Money; but *Hartwell* ſaid, His principal Witneſs, Mr. *Holt*, was fled: And asking Mrs. *Rawlins*, if ſhe was not free to go to the *Vine*-Tavern? She anſwered, She did not deny, but ſhe went freely thither; nor was there any Rudeneſs offered her then.

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Hartwell's *Defence.*

It being demanded of *Spurr*, What he had to ſay? He anſwered, He knew nothing more of the Matter, than that *Hartwell* gave him the Money to take out the *Marſhal's-Court* Writ, and he was imployed by him.

Spurr's *Defence.*

Then the Chief Juſtice having ſummed up the Evidence, ſaid, If *Hartwell* was imployed in this Deſign, in order to take Mrs. *Rawlins* into Cuſtody, to carry on this Marriage, and was privy to it, then he was equally guilty; but if he did only act as a Bailiff, and did not know the Deſign, then he was not guilty. But his arreſting Mrs. *Busby*, againſt whom he had no Proceſs, and taking Mrs. *Rawlins* from Mrs. *Busby* to his own Houſe, and from thence carrying her to the *Vine*-Tavern; his pretending that the Warrant was for 120 *l.* when as in Truth it was but for twenty Pounds; and his pretending that the Parſon was to be the Bail, though he was not preſent in the Room where the Marriage was, but hard by; yet he was in the ſame Houſe, which is all one, if he knew what Deſign was on Foot: Theſe are the Things you are to conſider of. As for Mrs. *Baynton*, ſhe pretended ſhe was a Widow, and you hear how ſhe proves it; and when ſhe is taxed with having a Child, then ſhe ſaith ſhe has a Husband; and when ſhe is asked about him, ſhe will give no Account, nor how ſhe ſupports herſelf. She ſaid indeed, ſhe paid every body their own; and that has no Difference with any body whatſoever. She pretended ſhe was Mrs. *Rawlins*'s Friend in what ſhe did; but it is plain, by what ſhe owns herſelf, that ſhe imployed *Hartwell*, and paid him for the Writ: And her pretending to ſet them down at *Oxenden* Chapel, there it was her Deſign to bring them under that Force to effect this Marriage. I muſt leave it to you to conſider, whether from the Beginning to the End, ſhe was not an Actreſs and a Manager of this whole Buſineſs. She hath

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hath been asked, how Mr. *Swendſen* came to be her Brother? 1ſt. ſhe ſays, he was her deceaſed Siſter's Husband: Then being asked, who was that Siſter? She ſaid, He was an Adopted Siſter's Husband. It was very extraordinary for her to go to Mr. *Hartwell*'s Houſe to the young Gentlewoman, and pretend ſhe came by Chance and heard her Name. I muſt leave it to you, Gentlemen, of the Jury, to conſider of the whole Matter: And as for *Spurr*, he was an Under-Officer, a Bailiff's Follower, and might be ignorant of the Buſineſs. You have not Evidence enough to make it appear, that he was privy to this Deſign, and therefore you are to acquit him: But as to Mrs. *Baynton* and *Hartwell*, if they were privy to this Deſign of forcibly taking away of Mrs. *Rawlins* with an Intent to marry her toMr. *Swendſen*, as it is plain he was an Actor, and ſhe an Abettor in the Force; then, Gentlemen, you are to find them guilty: If you are not ſatisfied, you are to acquit them.

The Jury being withdrawn, after half an Hour's Receſs, returned into Court with their Verdict, That *Sarah Baynton* was GUILTY; but *Hartwell* and *Spurr* were *Not Guilty*. Whereupon the Chief Juſtice told *Hartwell*, he had met with a very merciful Jury, and adviſed him to take care for the future.

Baynton *convicted*: Hartwell *and* Spurr *acquitted.*

ThePriſoners, *HaagenSwendſen*, and *Sarah Baynton*, were called to Judgment on the 28th of *November*; and it being demanded of *Swendſen*, What he had to ſay, why Sentence of Death ſhould not paſs upon him? He inſiſted, That Mrs. *Rawlins* had varied in her Evidence, and confeſſed ſeveral Things in Mrs. *Baynton*'s Trial, that ſhe denied in his. Mrs. *Baynton* made the like Obſervation; and added, That ſhe was with Child: To which my Lord Chief Juſtice replied, That was no Plea againſt Judgment.

Then Mr. Juſtice *Powell* obſerved, How great a Crime this Fortune-ſtealing was; how much worſe than any other Kind of Robbery: And that though *Swendſen* was not at the firſt taking, yet there were ſtrong Preſumptions to conclude him privy, and conſenting to it; and particulary his having a Licenſe prepared for the Marriage: That ſuppoſing he was not privy to the Arreſt at firſt, yet knowing of the Force, and being preſent afterwards, when ſhe was threatened to be ſent to *Newgate*, if ſhe did not marry him, and taking Advantage of her being under theſe Menaces; this was, in Law, a forcible Taking. Then he paſſed Sentence of Death on Mr. *Swendſen* and Mrs. *Baynton*: After which *Swendſen* acknowledged the Arreſt to be all his own Contrivance, and not Mrs. *Baynton*'s: And Mrs. *Baynton* declaring ſhe was with Child, a Jury of Matrons were impanelled, and brought her in quick with Child; whereupon Execution was reſpited till after her Delivery: And her Friends afterwards obtained her Pardon; but *Swendſen* was executed at *Tyburn* in Purſuance of his Sentence.

Swendſen *and* Baynton *condemned.*

Baynton *pardoned.*

Swendſen's *Execution and dying Words.*

The Execution of Haagen Swendſen, *on the* 9th *of* December, 1702.

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Haagen Swendſen, being brought to the Place of Execution, referred himſelf to the following Paper; which he left with the two Divines who attended him.

" I Do believe the World will expect I " ſhould ſay ſomething for their Satisfac- " tion. That I had a Deſign to have " Mrs. *Rawlins* for my Wife, is moſt true. " I was told of her by a Neighbour and " Friend of hers; and then made a further " Enquiry, and found her Quality ſuch, as " I might, without any Exceptions, pre- " ſume to, her Father being the Son of a " Tradeſman: The next was, how to get " into her Acquaintance; and not know- " ing how to be introduced, I prevailed with, " and perſuaded Mrs. *Baynton* to take a Lodg- " ing in the ſame Houſe with Mrs. *Rawlins*; " by which Means I found eaſy Acceſs " to my Wiſhes, and was as welcome to " the Family as if I had been one of them- " ſelves. I had their Company on Board a " Ship, where I gave them an Entertain- " ment; and was invited to dine with them; " and, by Degrees, I poſſeſſed myſelf of Mrs. " *Rawlins*'s Affection ſo far, that ſhe ſeem- " ed uneaſy without me, and frequently im- " portuned for my ſpeedy Return, and oblig- " ed me to ſit next to her at Table, ſaying, " That if I did not, ſhe would not eat; and " treated me with many private Careſſes; " by which Lovers, who have not frequent " Opportunity of ſpeaking, do, by ſigns and " Tokens, expreſs themſelves.

" I do declare, I had as good Reception as " a Lover could wiſh for, and all the En- " couragement imaginable; inſomuch, that " nothing ſeemed diſagreeable to my Intenti- " ons, but all Things did promiſe to facili- " tate my Deſign with Succeſs, ſhe her- " ſelf having told me, that ſhe was at her " own Diſpoſal, and would marry to pleaſe " herſelf.

" My Familiarity with Mrs. *Rawlins*, be- " fore my Marriage, was ſo great, that there " was no Room left for me to practiſe Vio- " lence upon her; though I muſt ſay, I " was impatient of Delays, and wiſhed for " an Opportunity to accompliſh my Deſire.

" But as for the unhappy Contrivance of " the arreſting Mrs. *Rawlins*, I had no Share " in it, but was perſuaded to conſent to it " by Mr. *Holt* and his Wife, and when the " Intrigue was brought to Perfection, I com- " plied, and laid hold of the Opportunity, in " order to marry Mrs. *Rawlins*, which, with " little Difficulty, and leſs Perſuaſion, I ac- " compliſhed; ſo having, without any Force " or Violence, declared to the Miniſter, that " ſhe was at her own Diſpoſal, and free to " marry me, which the Miniſter declared in " open Court at my Trial.

" After we had been in Bed, comes in one " Mr. *Bennet*, a Conſtable, with ſome of " Mrs. *Rawlins*'s Relations, who required " me to go with them before a Juſtice of " Peace: Finding they had no Warrant, I " refuſed to give Obedience to their Com- " mands, which created ſome Diſpute; and " my Wife, hearing the Noiſe, came out of " the

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" the Bed-Chamber, desiring me to be quiet, " and let her speak to them; which accordingly she did, in these express Words following; *viz.* Cousin, I have married this Gentleman with my own free Consent; he is my Husband, and this is my Wedding-Ring, shewing the Ring on her Finger: As for Mr. *Busby*, I will give him under my Hand, he shall come into no Trouble; and what would you more?

" Then said they, If it be so, then God bless you both together, and drank a Flask of Wine or two with me, and then departed: They were no sooner gone, but I asked her, Whether she would be willing to appear, and declare, what she had said to her Friends, to a Justice of Peace? and she said, she would, with all her Heart. Then we went to Mr. Justice *Barber*, in *York-Buildings*, and she declared the same to him; he told her he would take Notice of her Face, and bid her stick to that.

" The next Day, about eleven of the Clock, there came a Constable with a Warrant, and carried us before the Recorder, unto whom she said the same Thing over and over. Then said the Recorder, Alas! Child, they made you drunk, and you did not know what you did: To which she answered, That there were a great many there present, that knew her Life and Conversation, that she did not use to be drunk: And when the Recorder could not prevail with her, he conceiv'd that my being personally with her, obliged her to stand so firm to her Marriage: He then ordered me to be pulled away by Force from her, at which she fell a weeping; how she afterwards was lectured by her Friends, was sufficiently attested by my Prosecution, Trial, and Sentence; and after I was committed to *Newgate*, I was removed by a *Habeas Corpus* to the *Queen's-Bench* Bar, there to be arraigned, and pleaded Not guilty to the Indictment. I pleaded for longer Time to prepare for my Trial, but was allowed but four Days; when I was brought to my Trial, I moved for a Counsel to plead my Cause, as being a Stranger, and not acquainted with the Laws of *England*. My life being thus at Stake, a powerful Interest against me, and the Court not for me, rendered my Case both despicable and deplorable: And as for some of my Evidence, I do verily believe they were bribed by the adverse Party, others taken off by sinister Art, and some hindered by Force from appearing in Court for me; as for Mr. Justice *Barber*, he shewed himself but coldly in giving his Testimony, and said, That my Wife did confess before him, that she was married by her own free Consent; but at the same Time added, That she seemed very much disordered. As for that Gentleman I forgive him, and shall leave God to be Judge between him and me.

" It is to be noted, That my Wife did not deny in open Court, that she had made the Declaration aforesaid of her Marriage to Mr. *Bennet*, the Constable, and others, that Night we were married, but said, She did not know what she did when she said so; and many other Things she positively upon Oath denied at my Trial, which makes me have Pity upon her poor Soul, considering she confessed many Things at Mrs. *Baynton*'s Trial, which she denied upon Oath at mine. The World may see what it is to be a Stranger and unacquainted with the Laws; nay, I myself heard my Wife openly confess in Court, in Mrs. *Baynton*'s Trial, That there was a young Lady in the World, who was at her own Disposal that wished me a good Wife; and at last confessed She herself was the Person.

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" Among my many Misfortunes, I was represented by my Wife's Friends, to the Court, to be a Sharper and a Bully; but I called in and produced several Gentlemen of Repute, to give an Account of my Life and Conversation, who have accordingly attested the Honesty of my Principles by my Practice.

" It is further observable, how my Jury disagreed about my Verdict: There was one of them, Mr. *Erasmus Johnson*, a Person to me altogether a Stranger; for I declare in the Presence of Almighty God, that I do not remember to have been in his Company three Times in my Life, except in Church: This Mr. *Johnson* alledged, That none of the Evidence did prove, or swear, that I had any Hand in the Arrest, nor used any Force or Violence to the Gentlewoman, but she confessed the Marriage, which was proved by several Witnesses; which rendered my Case so hard, that the said Mr. *Johnson* insisted upon it to have me discharged, according to the Dictates of his Conscience; but at last he was overruled.

" Since my Conviction, I have used all the Means I could to procure my Pardon; but finding little or no Probability of it, I am now going to beg for Entrance at the Gate of Mercy in Heaven, which I beseech God to open for me.

" I expected my Trial should be publish-ed, that the World might see my Treatment, what I have done, and what I have left undone in my Case; but I am informed it may not be printed. I have said this, only to do myself Justice, although I could say a great deal more of Moment to the Purpose; but my time being so very short and precious, I must employ that little Time to the saving of my most precious Part, my Soul.

" I humbly beseech Mankind to believe me, and that what I have said or shall say, are the Words of a dying Man: This is not the Time for me to equivocate, nor to go out of the World with a Lie in my Mouth. I do therefore declare, and call the Great Omnipotent God of Heaven to my Witness, That I have asserted nothing, to the best of my Knowledge, but the whole Truth, nor uttered a Syllable out of Malice or Bitterness of Heart, against any Person whatsoever; but so far from it, I

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" do frankly forgive all my Enemies, and " beſeech God to put it into their Hearts to " repent of their Sins.

" As for my Wife, I am ſo much in Cha- " rity with her, that I cannot believe the " Severity extended to me, did altogether " proceed from herſelf; but her conſenting " to ſpill my Blood, makes the Guilt her " own: God of his great Mercy give her a " true Senſe of her Crimes, that the heavy " Judgment, hanging over her Head, may " not deſcend upon her.

" As for Mrs. *Baynton*, who is likewiſe " under Sentence of Death for the ſame Ac- " count with myſelf, as I have in the Court, " ſo do I now again poſitively declare, She " had no Hand in the Intrigue of my Mar- " riage, any more than what ſhe did by my " ſpecial Direction, and Perſuaſion; for Mrs. " *Baynton* was wholly a Stranger to Mrs. " *Rawlins*, until the unhappy Contrivance " of my Marriage, made them acquainted: " Neither did I know Mrs. *Baynton* till *June* " laſt paſt, though ſome have been pleaſed " to ſay, I kept her Company for three " Years, and have had two Children by her; " all which I declare is a wrong Notion, " and nothing of Truth in it. The only " Load I have on my Conſcience, is her " Death, of which I am the unhappy Inſtru- " ment; I beſeech God in his Mercy to " move the Queen's Clemency to ſpare her " Life, that her Blood may not riſe in Judg- " ment againſt me.

" As for myſelf, I am now going to ſuffer " an ignominious Death, for a Crime which " my own Conſcience doth not accuſe me of, " but the Rigour of the Law have made it my " unpardonable Crime; and as I forgive all " Mankind, ſo I beg Forgiveneſs of thoſe, " whom, through Inadvertency or otherwiſe, " I have injured or offended, beſeeching God " of his great Mercy, to vouchſafe them " Forgiveneſs whenſoever they ſhall ask it.

" My great Comfort is, that I have re- " conciled myſelf with my God, and that I " die in my natural Senſes; and that ſhort " Time I have had ſince my Trial, I truſt " in my Saviour I have not miſpent.

" And now, O Lord God, of thy infinite " Goodneſs, hear my Petition, pardon my " Offences, and forgive me my Sins: For- " give mine Enemies, and lay not my Blood " to their Charge; but grant that a ſincere " Repentance may waſh away their Guilt.

" I am now going out of this Vale of Ca- " lamity and Sin to my eternal Repoſe, " where through the Merits of my Saviour " Jeſus Chriſt, I hope to ſee God in his " Glory: And ſo I conclude, O Lord, receive " my Soul into thy boundleſs Mercy, for the " Merits of my Saviour Jeſus Chriſt. *Amen.*

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Remarks on Swendſen's Trial.

As to the Points of Law relating to Fortune ſtealing, theſe were ſo fully diſcuſſed by the Court and the Counſel at the Trial, that there is no Room to add any Thing upon that Head. I ſhall therefore only make ſome Obſervations on the Fact. And, in the firſt Place, it appears evident to me, that both Mrs. *Rawlins* and Mrs. *Busby*, who had the Care of her, did approve of Mr. *Swendſen*'s Courtſhip, or, at leaſt, were not at all averſe to it, in the Light they viewed him. Had he been a Gentleman of an Eſtate, as Mrs. *Baynton* repreſented him to them, he would have found no Difficulty in obtaining her for his Wife. This, Mrs. *Rawlins* ſeems to have acknowledged at the Trial; but added (I believe very truly,) that ſhe never deſired to marry him without the Conſent of her Friends, (and conſequently ſuch a Settlement as was anſwerable to her Fortune.) Neither ſhe nor they had any Thoughts of her matching with a Bankrupt: This he was fully convinced of; and this put him upon the Stratagem of an Arreſt: And he preſumed he had ſuch a Share in her Affections, that, when the Thing was once done, ſhe would have been ſatisfied, and never have proſecuted him for the Violence: And I am very ready to believe, ſhe never would have made any Stir about it, but have ſubmitted to remain his Wife, if her Friends had not incited her to proſecute him; for ſhe told them, when they found her at *Blake*'s, that ſhe was married by her own Conſent, and was ſatisfied and pleaſed with her Husband, and thereupon they wiſhed them Joy, and went about their Buſineſs, leaving them together all Night.

Very probably the Lady reflected that this was the moſt prudent courſe ſhe could take, now the Buſineſs was done; eſpecially ſince ſhe was married to a Man ſhe had no Averſion to. However, it is plain, he was the Author of the Force put upon her, and married her while ſhe was under that Force, by his own Confeſſion; and conſequently her ſubſequent Conſent could not wipe of his Guilt, or render him innocent in the Eye of the Law.

Some may obſerve, perhaps, that Mr. *Swendſen*, when he received Sentence, acknowledged the Arreſt to be *his own Contrivance*, but in his Dying Speech ſays, *It was the Contrivance of* Holt *and his Wife*; which ſeems to be a Contradiction: But it is evident he meant no more in his Dying Speech, but that his Friend *Holt*, and his Wife, firſt mentioned the Project, which he afterwards came into, and conſented to put it in Execution: For he adds, in his Speech, I complied, and laid hold of the Opportunity, when the Intrigue was brought to Perfection.

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The Trial of RICHARD HATHAWAY, as a *Cheat* and *Impoſtor*, at *Surry* Aſſizes, on the 24th of *March* 1702. 2 *Annæ*.

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Hathaway's *Trial.*

The Information.

THE Information charged that the Defendant, *Richard Hathaway*, of *Southwark*, in the County of *Surry*, Labourer, being a Perſon of evil Fame, and an Impoſtor, and maliciouſly contriving to take away the Life of *Sarah Morduck* (the Wife of *Edward Morduck*, of *Southwark*

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wark aforeſaid, Waterman) an honeſt pious Woman, and not a Witch, or uſing Witchcraft, Inchantment, Charm or Sorcery; did, on the 11th Day of *February*, in the 12th Year of the late King *William*, at *Southwark* aforeſaid, in the Preſence and Hearing of divers Perſons, falſely, deviliſhly, and knowingly, and, as a falſe Impoſtor, pretend and affirm, that he was bewitched by the ſaid *Sarah*, and that by Reaſon thereof he could not eat, but had faſted ten Weeks ſucceſſively; and pretended alſo that he was afflicted with divers Diſeaſes, and that by drawing Blood from the ſaid *Sarah*, by ſcratching, he ſhould be freed from his ſaid pretended Bewitching: And that the Defendant did thereupon ſcratch the ſaid *Sarah*, and draw Blood from her; and thereupon falſely affirm, That by drawing the ſaid Blood, he was freed from the ſaid Diſeaſes: Whereas, in Truth and Fact, he never was bewitched, nor had faſted as aforeſaid, and knew himſelf not to be bewitched by the ſaid *Sarah*; in Contempt of the ſaid late King and his Laws, and againſt the Peace, *&c.*

The Evidence opened by Mr. Broderick.

In opening the Evidence, Mr. *Broderick*, of Counſel for the Queen, ſaid, The diſcovering and puniſhing ſuch a Cheat as this, is highly neceſſary, not only for the vindicating the Publick Juſtice of the Nation, but for the Sake of Religion it ſelf, which ſuffers by nothing more than by the countenancing of indirect Practices made uſe of upon a Pretence of maintaining and ſupporting it's Credit. Religion has in itſelf ſuch Genuine and Native Truth, as muſt work Conviction upon the Underſtanding of all Perſons, who allow themſelves Leiſure to conſider it without Prejudice: But when Tricks and little Arts are carried on for a Time, and attain a general Credit, and appear afterwards to be what are called *pious Frauds*, they do far more Miſchief than all the Good propoſed by ſuch Practices can make Amends for. For when Men, who are Sceptically inclined, find that the Generality of Mankind run away with Stories of this Nature, and thoſe Facts afterwards prove undeniably falſe, they carry their Doubts on much too far and are apt to conclude, that they cannot ſecurely rely upon the Relation of others, and even on the general Conſent of Mankind, for the Certainty of any Fact whatſoever. It is therefore the Duty of all Perſons that are concerned for Religion in general, to endeavour to detect ſuch Practices, which weaken one of its moſt ſolid Foundations.

And my Lord, we conceive this Proſecution very neceſſary, in order to the vindicating the Juſtice of the Nation. Here was a Woman that underwent a ſolemn Trial, and upon a full Hearing was acquitted; yet afterwards, notwithſtanding the thorough Examination of the Fact, and ſuch an Evidence given, as convinced every unprejudiced Hearer, of the Innocence of the Defendant, and the Malice and Hypocriſy of the Accuſer; ſuch a Spirit did reign, that it was repreſented, that the Defendant had hard Meaſure; and not only the Jury, but the Court too, were reflected on: Nay, it went ſo far, that after the Innocence of the Woman appeared by her Acquittal, a Magiſtrate (whoſe Name the Witneſſes will diſcloſe in their Evidence) gave publick Countenance to this Impoſtor (for by that Name I will venture to call him), and ſo far gave Credit to him, that when the poor Woman was abuſed by the Rabble, and, her Life being in Danger, ſhe made Application to that Magiſtrate for Protection; he, inſtead of affording it to her, encouraged her Proſecutors, as if ſhe had really been guilty of the Witchcraft laid to her Charge; and conſiderable Collections were made for this Man, to ſupport his Spirits under the Diſappointment he met with, in her being acquitted.

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This Proſecution was neceſſary too, upon the Account of the poor Woman, who, unleſs ſome Check be put to the unruly Proceedings of unthinking People, is not yet ſafe in her Houſe, but in Danger to be torn in Pieces: And it was thought moſt proper, that this Matter ſhould be thoroughly examined in this Place, where the Scene of his counterfeiting, for the moſt part, did lie; that prepoſſeſſed People might be Ear Witneſſes of the Fairneſs of the Proceeding, and that all Perſons might have an Opportunity, if they thought fit, of offering any Thing, fit to be offered, in his Defence.

My Lord, we need not trouble the Court with Evidence tending to prove, that the accuſed Perſon is not guilty of Witchcraft: She is acquitted of that, and it ought not to be ſuffered to be made a Diſpute. But our Evidence will go beyond that, not only that there was no Colour or Foundation for the Charge on her of being a Witch; but that the Defendant did maliciouſly, without any Ground, and contrary to his own Knowledge, charge her with the having bewitched him: And I think, our Evidence, all through, will prove this Matter fully upon him, that he was not bewitched, nay, that he did not believe himſelf to be ſo, yet charged and proſecuted her.

The firſt Part of his pretended Witchcraft ſhewed it ſelf, by his vomiting Pins: How that Buſineſs was managed, and how he was detected in it, the Witneſſes will declare. And though we are not obliged to endeavour the giving an Account of what it was that induced him firſt to undertake this Impoſture, I think it will appear by the Evidence, that he had ſome Aim and Proſpect of Gain to himſelf; for upon his firſt pretending to vomit Pins, we ſhall prove he had prepared, *a Narrative of his own being bewitched*, and he *himſelf carried it to a Printer*, that ſo he might bring a Concourſe of People to him: But the Printer being a Man of ſome Underſtanding, looked on him to be a Cheat, and would not meddle with the Copy. He practiſed this Trick of vomiting Pins ſeveral Times; but pretending to it once, before one who did not take every Thing upon Truſt, but was curious enough to obſerve nicely and ſearch him; *after ſome Reſiſtance ſeveral Rows of Pins were found in his Pocket.*

The next Diſcovery of this Impoſture, was, the Affair wherein Dr. *Martin* was concerned; who brought two Women to him: The Doctor put an innocent Deceit upon him, but it was in order to diſcloſe a vile Impoſtor. When the Woman was brought to him to be ſcratched,

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ſcratched, being conſcious to himſelf how little real Effect the barbarous Experiment would have upon him, the whole Company obſerved, that he felt three or four Times from her Hand to her Elbow before he ſcratched, that he might be ſure it was a Woman's Hand; and when he had ſcratched and felt Blood, his Eyes were opened, though it was the wrong Woman.

Another Inſtance of his acting a Part, with a Deſign to impoſe upon the World, was, when he was carried from the *King's-Bench* to Mr. *Kenſey*'s. It was neceſſarily to be imagined, that, if he eat or drank nothing, nothing would come from him, either by Stool or Urine: He conſidered this, and for fear it ſhould be taken Notice of, that he diſcharged himſelf after ſo long a Faſt as he pretended, having Occaſion to make Water, he found the Lid of a Box, and making Water in it, put it ought of Sight, on the Bed's Teſter; and the firſt Diſcovery of his counterfeiting at Mr. *Kenſey*'s was, by the dropping of that Water on the Cloaths of the Bed. After he had been two Days there (during which Time he really did not eat) Mr. *Kenſey*, not knowing but that his Complexion might incline him to ſuch a Sullenneſs, as to ſtarve himſelf rather than directly confeſs his Cheat, having firſt examined his Mouth and Throat, and finding nothing there but as it was in all other Men, and that he had not only all other Organs, but that of ſwallowing, without any Obſtruction, as other People had, thereupon he framed this Deſign: He took Occaſion to pretend a Quarrel with the Maid-Servant who lived in his Houſe, within the Hearing of the Defendant, and told her ſhe was as very a Hypocrite as this Fellow; and after warm Words on both Sides, and a ſeeming Reſolution by her, that ſhe would quit her Service, the Maſter went away leaving the Maid and the Defendant together: She, to inſinuate herſelf into the Defendant, ſaid, Her Maſter was an odd Kind of a Man, a dangerous Man, therefore ſhe would not have the Defendant take any thing from him; and ſaid, She would take Care to ſupply him whilſt he ſtaid in the Houſe. Then his Stomach came to him very readily, and he was ſo far from being unable to drink, that he drank Brandy and other Liquors to Exceſs, and this for ſeveral Days: But ſtill thoſe in the Houſe being wary, thought it might be pretended by People, who were very willing to believe him, that this happened by the Charm's being diſſolved, and that he was unable to eat before; and therefore it was thought adviſeable to bring in ſeveral Perſons of Reputation, who ſhould obſerve him through a Hole fit for the Purpoſe; who, after they had ſeen him eat, examined how long he had been a Faſter? And he made Signs, *That he had faſted twelve Weeks, and clung up his Belly as a Proof of his Emptineſs, according to his common Practice, though he had in their Sight, juſt before, eaten a plentiful Meal.* So that, Gentlemen, it is evident, that what he did, was done maliciouſly, and with a Deſign to deceive and impoſe upon the World. After this, there being ſufficient Proof of the Impoſture, it was thought fit to bring him before a Court of Juſtice, thereupon this Information was exhibited againſt him; and if we prove it, I doubt not but you, Gentlemen of the Jury, will do that Right to the Government and to Religion, as to find him guilty of it, that he may be brought to the Puniſhment that ſuch a Crime deſerves.

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Then the King's Witneſſes were called, and firſt Dr. *Martin*, the Miniſter of the Pariſh, was ſworn, and teſtified, That on *Sunday* the 9th of *February*, 1701, there was ſuch a Tumult in the Church, that his Curate, who read Prayers, could not be heard; and upon his enquiring into the Matter, the Sexton informed him, There was a Witch in the Church, and brought one *Sarah Morduck* to him into the Veſtry. The Woman cried, and ſaid, She had given no Occaſion for this Scandal; however, he adviſed her to remain in the Veſtry; becauſe the Congregation were ſo diſturbed, that they would all go out of Church if ſhe ſtaid in it: That, after Sermon, he (the Witneſs), returning to the Veſtry, found the Sexton had let the Woman out, for Fear ſhe ſhould have been torn in Pieces: That after Church-time many of the Pariſhioners applied themſelves to him (the Doctor), to attend *Richard Hathaway*, whom they ſuppoſed to be bewitched; and going accordingly the next Day, *Hathaway*'s Maſter (a *Blackſmith*) told him his Servant was blind and ſpeechleſs, but was, however, ſenſible, and knew the Voices of his Friends: Whereupon he (the Doctor) went into the Room, and deſired *Hathaway*, if he knew him, to hold up his Hand; and he did ſo, and took the Doctor's Hand and kiſſed it; and asking him, If he ſhould pray by him in the Prayers of the Church? He held up his Hand again, and prayed with him, and *Hathaway* ſeemed much affected with it: Then he (the Doctor) went out, and diſcourſed his Maſter concerning the Occaſion of his Illneſs; and he ſaid, He thought *Sarah Morduck* had bewitched him, for he ſcratched her and found Good by it: Whereupon he (the Doctor) went thither again the next Day, taking *Sarah Morduck* and *Herne* her Brother, with him; and he told *Hathaway* he heard he had received Benefit by ſcratching *Sarah Morduck*, and deſired him to hold up his Hand, if he thought he ſhould be the better for ſcraching her again; and he held up his Hand, whereupon he (the Doctor) introduced another Woman, named *Johnſon*, and *Hathaway* ſcratched her, taking her for *Sarah Morduck*; and immediately his Eyes were opened; but being told of his Miſtake, *Hathaway* was much caſt down, and ſeveral People preſent were ſatisfied he was a Counterfeit. That he (the Doctor) going to the Houſe again ſome Hours after, found a great Mob there; and *Hathaway*'s Maſter and Miſtreſs met him, and ſaid, What have you done? You have ruined me and my Family: You have given it out to be a Cheat; and now he is in a worſe Condition than before. And he (the Doctor) was informed the next Day, That *Sarah Morduck* had been dragged to the Houſe after he went away, and *Hathaway* had ſcratched her; after which, he pretended he had recovered his Sight perfectly,

Dr. Martin's Evidence.

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fectly, and eat and drank, and walked about: Whereupon he (the Doctor) ſent for him to his Houſe, and talking with him, *Hathaway* demanded, If he did not think he was bewitched? and he anſwering He believed he was not, *Hathaway* replied, He might as well not believe what he ſaid in the Pulpit; and that he might ſay to the Doctor, as our Saviour ſaid to the *Jews*, *Though you ſee Miracles, you will not believe*, Whereupon, the Doctor bid him go about his Buſineſs.

That laſt *Eaſter* he (the Doctor) was ſent for to Sir *Thomas Lane*'s, where he found *Hathaway* eating very heartily, and was told, He had drawn Blood of *Sarah Morduck*, before Sir *Thomas Lane*, which had brought him to himſelf: That going into the Room, where Sir *Thomas* was, he found Sir *Owen Buckingham*, and Dr. *Hamilton*, to whom he related what had happened on his going to ſee *Hathaway*; but *Hathaway* pretended he did not remember he was with him: And when *Welling*, his Maſter, acknowledged he was there, and that *Hathaway* was in his Senſes at that Time, Sir *Thomas Lane* ſaid, He had a violent Fit afterwards, which made him forget the Doctor's being there: And Sir *Owen Buckingham* ſeemed to be of Opinion alſo, That *Hathaway* was really bewitched.

That a little afterwards he (the Doctor) was *ſubpœna'd* to the Aſſizes, to be a Witneſs at the Trial of *Sarah Morduck* who was indicted for a Witch; and, before the Aſſizes, Bills were put up in ſeveral Churches of the following Tenour, *A poor Man being afflicted by an evil Woman, deſires the Prayers of this Congregation.* That the Woman being acquitted, at *Guildford* Aſſizes, he imagined all People had been ſatisfied with the Juſtice done there; but when he came home, he was abuſed by many People, who told him, *The Blood of that innocent Man lay at his Door: The Woman had been hanged, if he had not ſaved her: The Judgments of God would fall on him.*

Here the Counſel for *Hathaway* objecting, That what other People did was not Evidence againſt him, the Chief Juſtice anſwered, If there was Evidence that *Hathaway* had been guilty of Deceit, and a Deſign to deceive the People, would they not allow it to be given in Evidence, that the People had been deceived?

Then Dr. *Martin* went on and ſaid, It was reported he had been bribed; that he had received ſeveral Guineas; that the Judge was bribed, and the Jury bribed; and that the Judge was ſo biaſſed, he would not ſuffer the Woman to be ſearched.

Johnſon's *Evidence.*

Mrs. *Johnſon* being ſworn, teſtified, That *Hathaway* ſcratched her inſtead of *Sarah Morduck*; and he pretended to have received his Sight thereupon, as Dr. *Martin* teſtified.

Bateman's *Evidence.*

Mr. *William Bateman* depoſed, That he went to ſee *Hathaway* ſpew Pins: That they gave him ſomething in a Cup, which it was pretended would make him vomit; but the Witneſs could not perceive he ſwallowed any Thing: However, he reached to vomit fourteen or fifteen Times, ſeeming to be in a great Agony; and there were ſome hundreds of Pins upon the Ground; but the Witneſs thought they were dropped by other People, for he took ſome of them up, and found they were dry, and ſome of them were in Chains; whereupon he ſaid, He believed they were the ſame that had been ſhewn at his Houſe; but his Maſter affirmed they were not the ſame, and endeavoured to ſatisfy him his Man did vomit them: Then the Witneſs deſired he might have a clean Pot to vomit in, and, having ſearched his Mouth, held the Pot cloſe to his Head: That *Hathaway* often endeavoured to lift up his Hands to the Pot, but the Witneſs would not ſuffer him; and though he vomited ſeveral Times, there were no Pins in the Pot, but ſeveral upon the Ground; and the Witneſs obſerving that the Pins on the Ground did not come out of his Mouth, the People were very preſſing he ſhould believe that they did. Then the Witneſs, with a great deal of Difficulty, forced his Hand into *Hathaway*'s Pocket, where he found ſeveral Parcels of crooked Pins, like thoſe on the Floor.

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The Printer's Evidence.

Richard Ball, a Printer's Man, teſtified, That *Hathaway* brought him a Narrative, giving an Account of his vomiting Pins, and deſired him to print it; and, at the ſame Time, ſhewed him a Diſh-full of crooked Pins, which he ſaid he had vomited, and declared he had eat nothing for a great many Days: But his Maſter, the Printer, being preſent, ſaid, *Hathaway* looked very well: He believed he was a Cheat, and would have nothing to do with it: And thereupon *Hathaway* went away.

Hern's *Evidence.*

Mr. *Hern* depoſed, That he was preſent when *Hathaway* ſcratched Mrs. *Johnſon* inſtead of *Sarah Morduck*, and pretended to recover his Sight thereupon, as Dr. *Martin* had teſtified: And that they afterwards dragged *Sarah Morduck* to the Houſe, and he ſcratched her, and the Rabble aſſaulted and abuſed her, leaving the poor Woman in a wretched Condition: Whereupon the Witneſs procured Juſtice *Rich*'s Warrant, and apprehended one *Osborn*; but the Juſtice diſcharged him for Want of Evidence: However, *Sarah Morduck* was ſo mobbed and inſulted, that ſhe was forced to remove from *Southwark* to St. *Paul*'s Wharf in *London*; and thither *Hathaway*, with one *Jones* and the Rabble, followed her: Whereupon the Witneſs got Sir *Thomas Lane*'s Warrant, and took up *Hathaway* *Jones*; but Sir *Thomas* believing the Story of *Hathaway*'s ſpewing of Pins, ſaid, There was Provocation enough for the Inſult, and compelled the Woman to let *Hathaway* ſcratch her again, which he did: and then he appeared very briſk, and calling for Bread and Cheeſe, eat it greedily, though he pretended he could not ſwallow any Thing before. That Sir *Thomas*, afterwards, ordered the Woman to be ſtripped and ſearched by Dr. *Hamilton*; but the Doctor could find nothing extraordinary about her: However, Sir *Thomas Lane* committed her to Priſon, and would not accept of an Hundred Pound Bail at that Time; but afterwards, when Dr. *Martin* had been with him, he permitted her to be bailed.

Kenſey *the Surgeon's Evidence.*

Kenſey, the Surgeon, depoſed, That *Hathaway*, being in the *King's-Bench* Priſon, was com-

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committed to his Care in *November* laſt; and, going to that Priſon for him, the Turnkeys told him, His Tongue was ſwelled; but, upon ſearching his Mouth, he found nothing amiſs, and brought him to his Houſe, where he offered him Meat and Drink ſeveral Times, and he refuſed it: That the next Morning he was ſurly, and refuſed to riſe, and they found the Rug wet with his Urine, which dropped from the Teſter of the Bed, where he had endeavoured to conceal it in the Lid of a Box: That he entreated *Hathaway* to diſcover who ſet him to work, for he looked upon him as a poor innocent Fellow; but he would diſcover nothing, and ſtill refuſed to eat. That finding neither Perſuaſions nor Threats could move him (for he threatened to ſtarve him, if he would not confeſs) he (the Witneſs) feigned a Quarrel with his Maid, ſaying, in *Hathaway*'s Hearing, he would be troubled no more with her: And when he was gone, the Maid, by his Directions railed at him *(Kenſey)* and bid *Hathaway* have a Care how he took any Thing from her Maſter, or his Brother, and ſhe would bring him Meat, and what he wanted: And ſhe accordingly carried him Victuals and Drink from Time to Time, and ſhe, and ſeveral of the Neighbours, (through ſome Crevices in the Boards) ſaw him eat and drink plentifully two or three Times a Day; and one Day, in particular, he eat ſo freely, and drank ſtrong Beer and Brandy after it, that he brought his Dinner up again, and he (the Surgeon) coming in, *Hathaway* raked the Aſhes over it, to hide it: That the next Day he offered him Meat, but he pretended he was ſo weak he could not get off his Chair, though they had ſeen him eat and drink ſeveral Days before, dance about, and play upon the Tongs. On the 8th Day after he came to his Houſe, he endeavoured to make his Eſcape; and on the 10th in the Morning, as he was putting on his Cloaths, he ſeized on him (the Surgeon); but ſtruggling with him, *Hathaway* pretended Feebleneſs, and fell down upon the Bed: Being told afterwards that his Friends had betrayed the Secret, he offered to go before the Lord Chief Juſtice and diſcover the whole Truth; but his Lordſhip not being in the Way, then he returned to the old Story, and ſaid he was bewitched.

That at his firſt coming to his Houſe, he asked him how many Weeks he had faſted, and he counted his ten Fingers, for he pretended to be dumb.

The Evidence of the Surgeon's Maid.

Elizabeth Baker, *Kenſey*'s Maid, teſtified, That after *Hathaway* was brought to their Houſe, her Maſter feigned a Quarrel with her, and ſhe ſupplied him with Meat and Drink by her Maſter's Directions; and that fetching him a Glaſs of Brandy, once, when a Child was by, he refuſed to drink it, pointing to the Child, whereupon ſhe ſtood before the Child, and then he drank it: That at another Time ſhe gave him ſo much ſtrong Beer, that he pointed to his Head, intimating his Head ached, and about two Hours after, he was very merry, danced about, and played upon the Tongs: That on the 11th of *November*, her Maſter ordering her to carry him ſeveral Slices of roaſt Veal, ſome of the Neighbours ſaw him eat it through the Chinks of the Walls.

To this his Counſel objected, That ſuch Evidence ought not to be given; becauſe this was done after the Record bore Date: But the Chief Juſtice anſwered, It was Evidence to prove, his pretended Faſting before was a meer Deceit; for if his Faſting the laſt two Weeks appeared to be a Fraud, it was ſtrongly to be inferred, that his pretended Faſting ten Weeks before was ſo too.

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Evidence of the Neighbours who ſaw him eat.

Mr. *Stanton* depoſed, That being deſired by Mr. *Kenſey* to come and ſee *Hathaway* eat and drink, he went thither, and ſaw the Meat, before it was carried to him, being five Slices of Veal, with Bread and Beer; and that *Hathaway* looked about at firſt, to obſerve if any one could ſee him, and then fell too, and eat as heartily as any Man could; but hearing a Noiſe, he ran away with the Meat, and ſet it on a Dreſſer, and the Maid telling him there was no Body coming, he went to it again, and eat it up, after which he drank and ſat down by the Fire: That afterwards, he (this Witneſs) and the reſt of the Company went into *Hathaway*'s Room, and carried a Bottle of Beer and drank to him, but he made Signs that he could not drink, and ſhewed them that his Belly clung to his Back.

Hunt's Evidence.

John Hunt depoſed, That he pretended to ſpew Pins, but they were bright and clean, and only came out of his Mouth he thought: That the Company thought they heard ſtrange Noiſes the ſame Night, but he found *Hathaway* made the Noiſe with his Feet; and that *Welling* his Miſtreſs ſewed three little Bags to his Shirt, in which ſhe ſaid were Charms, and he uſed to be much better for them.

Brand's Evidence.

Elizabeth Brand teſtified, That ſeveral Sums of Money were gathered for *Hathaway*; particularly againſt *Guildford* Aſſizes, ſhe and others went about, and gathered between Six and Seven Pounds, which they paid to Mrs. *Welling* towards his Charges.

Shipp's Evidence.

Matthew Shipps depoſed, That *Hathaway* being brought from *Guildford* Aſſizes to the *Marſhalſea*, was in his Cuſtody four Days; and that he eat and drank, and ſlept well during that Time.

Hathaway's Defence by his Counſel.

The King's Counſel having cloſed their Evidence, Mr. Serjeant *Jenour* the Priſoner's Counſel entered upon his Defence, and ſaid,

My Lord, and you Gentlemen of the Jury, I am Counſel for the Defendant *Richard Hathaway*, who is indicted for a Cheat and Impoſtor; and it is for pretending himſelf to be bewitched, and that he has uſed indirect Arts and Means to make People believe he was ſo bewitched; and that this *Sarah Morduck* was the Perſon that had bewitched him; and that this was contrived by him, in order to bring Miſchief and Damage on this *Sarah Morduck*, and to the evil Example of the Queen's Subjects. You have heard the Evidence that hath been given, and therefore I ſhall not repeat it, but only obſerve ſome few Things to you: The Doctor has taken a great deal of Pains in this Cauſe; but that which he does tell you by Hear-ſay, what other Perſons have told him, is not ſuch Evidence as you are to take any Notice of, that is, what *Johnſon* told him, and likewiſe what other Perſons told him, concerning this Man; for what they have ſaid to him

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him of this Man, though it may be true, is not to come under your Conſideration. There are ſeveral others that have given Evidence of what other Perſons have ſaid, and they have given it as their Opinions, that what this Man did, was the Cauſe of their Doings; of which you are to take no Notice. But, my Lord, that which ſeems to bear moſt hard upon us is, That becauſe the Doctor and ſeveral others have been abuſed, both before and after the Trial, for what they endeavoured to do; therefore they would inſinuate as if my Client had had a Hand in it: But if a Man be doing any Thing, and another takes the Advantage of it, to do another a Miſchief, I hope that Miſchief ſhall not be laid to his Charge. My Lord, there is one Man that has given a great deal of Evidence as to his vomiting of Pins, and ſays, that he was by, and he ſwept the Ground, and when he had a Chamber-pot to vomit in, he could not find any Pins there; but there was ſome upon the Ground again. So likewiſe for his Faſting, you have had Evidence to prove that a Cheat: And this ſeems to affect him moſt, that all this Pretence to be bewitched, and vomiting of Pins, and Faſting, was a Cheat. This is the Matter that they accuſe him of; of which, if he be really guilty, I come not here to defend him; but I am to defend him as far as Witneſs will do. And now, my Lord, if my Brief be true, we ſhall ſatisfy you that my Client was in a very lamentable Condition, ſuch as one would think no Man could be in and live; and I will lead you by theſe Steps. When he was thus diſabled, could neither ſpeak nor take Suſtenance, his Maſter, after he had ſerved him two Years, and he had lived very civilly, and behaved himſelf well in his Maſter's Service, till he fell thus ill; then he was ſo ill, that after the Maſter had ſpent a great deal of Money with Doctors and Apothecaries, he could get no Cure for him; then he got him into the Hoſpital, and there he continued a long Time, and at laſt they gave it in, That he was incurable, and they turned him out: But his Maſter made Intereſt, and got him in again, and he continued ſometime there again; and there it was that he was firſt thought to be bewitched, for they had him twice, and could do no good with him; and the Tenders told him, He muſt lye under ſome evil Tongue; and thereupon he was turned out as incurable, and with that Inſtruction, that it was an incurable Diſeaſe. So he came home again, and his Maſter and Miſtreſs was acquainted with it; and they conſider what Perſon it ſhould be, that ſhould have any evil Deſign againſt him; and at laſt they recollect, that his Maſter had taken a Room over the Head of this *Sarah Morduck*; and ſhe had gone to the Shop often, and had given them very ill Words, and ſhe ſhould be even with him one Time or other; and therefore they concluded, this Woman was the Perſon. Upon this there were many Things contrived what Courſe they ſhould take to do him good; and there was one Thing concluded upon, in order to his Eaſe (which I think none ſhould adviſe), that is, the Buſineſs of Scratching: But this Woman, when ſhe was accuſed by them of bewitching him, ſhe offered herſelf to be ſcratched; and ſhe was ſcratched; and from thence this Man found Eaſe: But afterwards he fell ill again, and he went into *London*, and was examined at Sir *Thomas Lane*'s; and, upon Examination, they thought that this Man did lie under ſuch an Affliction. I cannot ſay it is an irreligious Thing to ſay, there are Witches in the World; but this Man lay under ſuch a Diſtemper, that no Doctor could know what to do with it; and they could not imagine who ſhould do it, but this Woman; and ſhe was there ſcratched by him, and he did find Relief by it. My Lord, this being the Matter of Fact, we ſhall call very ſubſtantial Witneſſes to prove it. As to his Faſting, we ſhall prove that he was put under the Care of very ſubſtantial Perſons, and that he did not eat or drink for three Weeks or a Month; ſo that it will appear we had no Contrivance in the World, but only would get Eaſe if we could. We have twenty Witneſſes to call.

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Then the Priſoner's Witneſſes were called, and *Ann Eaton* depoſed, That ſhe looked after *Hathaway* nine Weeks: That ſhe was with him four or five Days and Nights together without ſtirring from him, and ſhe did not ſee him eat or drink during that Time: That he was at ſome Times dumb and blind, and loſt his Senſes. *The Priſoner's Witneſſes.*

Gibſon teſtified, That he had ſtrange Motions, foamed at the Mouth, and his Face was diſtorted, and he was blind and dumb.

Ann Pearſe, a Nurſe of the Hoſpital, depoſed, That he lay ſeven or eight Days in a very weak Condition there, without Eating or Drinking, and complained he could not go to Stool; whereupon the Doctor gave him Quickſilver.

Smith, an Apothecary, depoſed That when he came Firſt to his Maſter, he was troubled with Convulſion Fits, ſometimes lay like a Man that was dead: But being asked, If this might not be counterfeited? he anſwered, No doubt, it might.

Some Women depoſed, They had heard him bark like a Dog; and believed he was bewitched.

Keeling depoſed, He watched with *Hathaway* nine Nights, and he neither eat nor drank while he was with him: And *Bridges* depoſed, he watched with him in the Day-time, when *Keeling* watched with him in the Night, and he never ſaw him eat or drink all that Time, though he never went from him till *Keeling* came to relieve him; and they both teſtified, That no Company came to him, nor did he ever go out, but on *Sunday* to Church.

Webb, one of the Officers of the Pariſh, teſtified, That they put him into an empty Houſe, with the two former Witneſſes to watch him; and that he vomited ruſty Pins; and they could not diſcover he eat or drank any Thing all the Time he was there; and that he went out only once on a *Sunday* to Church.

Dell depoſed, That he watched with him one Night, and he went to Stool, and they found in his Excrements a Lump of Hair, looſe Pins, a Stump of a Nail, and two or three

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three Pieces of Stone; and he lay in a ſad Condition as if he was dumb.

Two others confirmed the Teſtimony of this Witneſs. Mrs. *Davenport* teſtified, That Dr. *Hamilton* committed *Hathaway* to her Care to diſcover, Whether he faſted as he pretended; and he was in her Houſe ſeventeen Days: That ſhe herſelf, her Son, or ſome others of her appointing, watched him diligently all the Time, and he neither eat nor drank; and to prevent any Deceit, they ſearched his Cloaths, and bought a Bed on purpoſe for him to lye on.

Then ſeveral of the Witneſſes Mrs. *Davenport* had employed to watch him, depoſed, That he neither eat nor drank in all the ſeventeen Days while they were with him reſpectively: But the Chief Juſtice demanding, Where her Son was, that watched with him Part of the Time? ſhe anſwered, He had been gone to Sea about a Week.

Dr. Hamilton's *Evidence for the Defendant.*

Dr. *Hamilton* depoſed, That being at Sir *Thomas Lane*'s when *Hathaway* was examined he ſearched his Mouth and Throat, and found nothing amiſs, and obſerved, There was nothing to be depended on but his Faſting: As for vomiting Pins, and the reſt, it might be performed by Legerdemain; and he ſuſpected him to be an Impoſtor: That he told *Hathaway*'s Maſter, If he thought fit, he would lock him in a Room a Fortnight, and ſee if he counterfeited; that the Maſter afterwards came to him, and deſired him to make the Experiment: Whereupon, he committed him to the Care of Mrs. *Davenport*, and deſired her to ſtrip him, and to ſee he had no Bread about him, and to ſend to *Long-Lane* and buy new Things for him to lie on, *&c.* That he ordered her to let no Body come to him, and that one or two of the Family ſhould ſit up with him every Night; and ſhe promiſed ſhe would. They ſent him Word he had ſtrange Kind of Motions; but he depended on nothing but his Faſting. That he had heard of many that had faſted ſeveral Weeks, but they had taken Water, or ſome ſuch Thing, which, though they are very weak Things, yet may keep one alive; but none can live without taking ſomething: That he ſaw this Man ſeveral Times while he was at Mrs. *Davenport*'s, and he cou'd not believe but that he had eat, becauſe his Pulſe was ſtrong.

The Chief Juſtice demanding of the Doctor, If he thought it poſſible in Nature, or if all the Devils in Hell could enable a Man, to faſt a Fortnight? The Doctor anſwered, He thought not; and that made him ſuſpect *Hathaway:* and being asked, If he thought the Pulſe of a Man could be very ſtrong who had faſted eight Days? he ſaid, He thought not.

Sir Thomas Lane's *Evidence for the Defendant.*

Sir *Thomas Lane* being ſworn, depoſed, That *Hathaway*'s Maſter brought a Woman before him about a Twelvemonth ago, upon Suſpicion ſhe had bewitched his Man, affirming, he had faſted above eight Weeks, and voided and vomited Pins; and two Witneſſes ſwore to Chains of an hundred Pins each, that came from him in his Excrements; and the People imagining, that ſcratching the Woman might give Relief, were very earneſt with him, that he would command the Woman to be ſcratched, he anſwered, That would be an Aſſault; but if ſhe would conſent, he might do it; and the Woman thereupon ſaid, If ſhe might be ſecured from ſuch Inſults for the future, ſhe would let him, and conſented to it: And *Hathaway* no ſooner ſcratched her, but he grew better, had Bread and Cheeſe brought him, eat prodigiouſly, and drank up a Quart of Drink without gulping. That he (Sir *Thomas*) asked Mrs. *Morduck*, and her Friends, If ever they knew the Fellow got Money by theſe Tricks? but they could not ſay he had. And it appearing to him that there was neither Profit or Revenge in the Caſe, he thought the Man could not counterfeit all this for no End, and run the Hazard of being whipped.

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The Chief Juſtice ſaid, The Queſtion was not Whether he ſhould be puniſhed for a Fool, but whether he was a Knave? And whatever Puniſhment he was to ſuffer, did not belong to him to determine.

The Chief Juſtice directs the Jury.

Then his Lordſhip ſummed up the Evidence, and obſerved, As to *Hathaway*'s being relieved by ſcratching the Woman, he pretended had bewitched him; there was no Rule either in Philoſophy or Divinity, that could induce a Man to believe this would effect his Cure if his Diſtemper had been real, as to his having faſted ſo long a Time. That of our Saviour's faſting forty Days, is mentioned in Scripture as miraculous, and an Effect of Divine Power, being one Evidence of the Truth of the Chriſtian Religion: And that none could imagine, without ſuch Aſſiſtance a Man could faſt forty Days or above, and yet continue in Health: That all the Witneſſes in the World, or all the Devils in Hell, could not invert the Order of Nature, and enable a Man to faſt beyond the uſual Time that Nature will allow; and that if the Thing be impoſſible, and this Man had endeavoured to make the World believe he had faſted ſo long a Time, it was moſt evident, he was a Cheat, and muſt contrive to have Victuals one Way or other ſecretly conveyed to him, of which the impoſſibility of his being able to faſt ſo long was a Demonſtration: That it was plain the Man had counterfeited, during the Time he was at Mr. *Kenſey*'s; and though that particular Time be not laid in the Information, yet it is a Continuance of the Time that is laid therein; and if he was an Impoſtor, by pretending to have faſted while he was at Mr. *Kenſey*'s Houſe, he left them to conſider, whether he was not ſo all the Time before: He remembered that his ſcratching and drawing Blood of a ſtrange Woman inſtead of *Sarah Morduck*, did ſeem to avail him as much as if he had ſcratched her, until he underſtood he was impoſed upon: And upon the whole, if they did not believe he was *non compos mentis*, or under any Deluſion, but had endeavoured to impoſe upon the Magiſtrate, and on the World, by counterfeiting theſe Infirmities; then there was all the Reaſon in the World to find him Guilty.

And the Jury, without going from the Bar, found the Defendant GUILTY.

Richard

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Hathaway *and others tried for an Aſſault on* Sarah Morduck.

Richard Hathaway, Thomas Welling *his Maſter, and* Elizabeth *his Wife, and* Elizabeth Willoughby, *were afterwards tried upon another Information, for a Riot and Aſſault on the ſaid* Sarah Morduck.

At which Trial it was proved, That the ſaid *Richard Hathaway*, on the 25th of *September* 1701, came to the Houſe of the ſaid *Sarah Morduck*, and ſcratched her Face in a cruel Manner, forced out one of her Teeth, and carried away part of her Cloaths: And that on the 11th of *February* following, one *Thomas Osborn*, *Thomas Hatton*, with four other Perſons, came in Diſguiſe to the ſaid *Morduck*'s Houſe, and forced her out, and carried her to the Houſe of *Thomas Welling*, one of the Defendants; and that there the ſaid *Richard Hathaway*, by the Encouragement of the ſaid *Osborn* and *Hatton*, and the reſt of the Company, did again ſcratch her in a moſt barbarous manner: That afterwards, *Elizabeth* Wife of the ſaid *Thomas Wedding*, fell upon her, and ſcratched her Face, and tore off her Head-cloaths, and Hair; and then the ſaid *Thomas Welling* gave her two or three Kicks on her Belly, and threw her on the Ground, and ſtamped upon her, and caſt her into the Street, and ſhe was ſo much bruiſed, that ſhe was forced to keep her Bed for a Fortnight: That *Elizabeth Willoughby*, another of the Defendants, came with a great many Perſons to the ſaid *Morduck*'s Houſe; and that the ſad *Elizabeth* gave her ſeveral Blows with her Fiſt, and would have pulled her out of her Houſe, for the Defendant *Hathaway* to ſcratch her, he ſtanding at a Corner hard by; but was prevented by one *Sarah Hall:* And that in the Month of *September* aforeſaid, as the ſaid *Sarah Morduck* was going into *Newgate* Market, one *Hopkins* crying out, *There goes the old Witch*, a great Company of People, in a riotous Manner, flocked about her, and threatned to throw her into a Horſe-pond; and that if ſhe had not got into an Ale-houſe, by the Aſſiſtance of ſome Women there, ſhe had been Murthered: And that in *Eaſter* or *Whitſon* Week laſt, one *Jones* was apprehended for a Riot, by him, and others, committed, in one *Burrel*'s Houſe in *London*, endeavouring to force themſelves into the ſaid *Sarah Morduck's* Chamber, that the Defendant *Hathaway* might ſcratch her; and that the ſaid *Jones* was carried before Sir *Thomas Lane*, who diſcharged him, ſaying, There was cauſe enough for the Riot. The Evidence for the King being concluded, the Jury withdrew; and ſoon after returned, and brought all the Defendants in GUILTY.

Remarks on Hathaway's *Trials.*

It is impoſſible to read *Hathaway*'s Trials, without bluſhing for the Credulity and Superſtition of our Country-men, who will not be convinced of ſuch Cheats and Impoſtures upon the ſtrongeſt Evidence that can be given; but tenaciouſly perſiſt in every idle Tale they have been told of this kind in the Nurſery, and contribute to delude themſelves, as well as their Neighbours, by encouraging and propagating ſuch Stories, how ridiculous ſoever, upon the weakeſt Suggeſtions and Surmiſes.

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There ſeems to be a Series of Facts and Circumſtances, in which moſt of theſe Relations agree, and are made in a manner the Teſt of a Perſon's being bewitched; as a kind of Convulſion Fits, Diſtortions of the Countenance, Barking like a Dog, unaccountable Noiſes, and the voiding of crooked Pins upwards and downwards. They ſeem to confine the Devil to this beaten Road of Action, and do not often ſuffer him to omit theſe Methods of Torture and Deluſion; and ſome have ſuperadded that of long Faſting of late, which has unluckily diſcovered the Falacy of all the reſt, to all ſuch as are capable of Conviction: For there are a Set of People amongſt us, eſpecially the Sectaries, that ſeem determined never to be undeceived; that look upon every Piece of pretended Witchcraft, as a ſtrong Proof of their Religion and another World, and call all Men Atheiſts and Infidels that won't believe them.

We ſee here two wiſe City Magiſtrates, Sir *Thomas Lane*, and Sir *Owen Buckingham*, giving entire Credit to every Thing that was reported of *Hathaway*, and the Woman he pretended had bewitched him, and even encouraging the Mob to pull her in Pieces, by refuſing to take any Notice of thoſe that aſſaulted and wounded her. The credulous Sir *Thomas Lane* even cauſed the Woman to be ſtripped, to ſee if there were any Teats or Excreſcencies about her to ſuckle her Imps, and the *Scotch* Doctor *Hamilton* was weak enough to be employed in this Office: But this, I muſt confeſs, is not to be much wondered at in the Doctor who was born and bred in a Country, where every Story of this kind is believed to be as true as Goſpel, and where they hang up half a ſcore decrepit old Women every Year, whoſe unhappy Circumſtances and Countenances render them the Objects of the People's Fury; though they are in Reality the greateſt Objects of Compaſſion.

It is evident, *Hathaway* had two Inducements to counterfeit his Fits and Faſting; the firſt his Expectation of living upon the Charity and Contribution of his Neighbours without working; and his Maſter and Miſtreſs, 'tis evident, expected to ſhare in the Profit, by telling Doctor *Martin* he had undone them, when he diſcovered the Cheat: And in the next Place, both the Maſter and Man had the Vanity to deſire they might be talked off, and diſtinguiſhed, for having Miracles wrought in their Favour; for *Hathaway* ſaid to Doctor *Martin*, in the Words of Scripture, *Though you ſee Miracles, you will not believe:* The Pariſh, and the whole Neighbourhood alſo, we find very zealous in encouraging all People to believe, that Signs and Wonders were wrought among them, and putting up Bills in ſeveral Churches, *to pray for a poor Man afflicted by an evil Woman*; and I don't doubt, but many of the People that were ſet to watch whether *Hathaway* eat or drank, were prepoſſeſſed in his Favour, and contributed to carry on the Cheat, or at leaſt connived at it; and ſome of them poſſibly were bribed to ſay what they did: And had a Man of leſs Judgment and Diſcretion than Doctor *Martin* been Miniſter of the Pariſh, the Credit of this

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this Cheat had infallibly been as well eſtabliſhed, as many others of the ſame kind have been, from leſs ſpecious Circumſtances.

What Species of Dæmons and Animals thoſe Imps were, which our ſagacious Alderman expected to find about the old Woman, or how they were nouriſhed by her, would puzzle any Man to deſcribe, I believe; and he muſt have been confounded, if the Court had required his Worſhip to declare, what he meant by ordering the Doctor to ſearch her. In the Days of *Hudibras*, it ſeems, it was no uncommon thing to find a Calf an Alderman, a Gooſe a Juſtice; but, in our Days, I preſume, the Government takes Care to exclude all ſuch weak and credulous Creatures from the Magiſtracy, and puts Gentlemen into Commiſſion that will protect the old, the decrepit, and deformed Females in their Pariſhes, from being torn in Pieces by the Rabble, as well as the young and beautiful, from the Rapes of Giants and diſcourteous Knights, the Employment of the celebrated *Don Quixot*, who ſeems to have been touched alſo with the Alderman's Foible, and to have had great Faith in Magick and Necromancy.

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Reſolutions of the Houſe of Peers, in Relation to ſome Papers, Books, and Sermons, publiſhed in the Years 1701 and 1702. 2 and 3 *Annæ*.

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Fuller *ordered to be proſecuted.*

IT was Ordered by the Lords, on the 19th of *January*, 1701, That the Attorney General proſecute *William Fuller* for certain Libels *(The Tenor whereof the Reader has ſeen in* Fuller's *Trial.)*

Dr. Drake *ordered to be proſecuted.*

It was Reſolved by the Lords, on the 9th of *May*, 1702, That in the Preface of a Book, intitled, *The Hiſtory of the laſt Parliament, begun at* Weſtminſter *the 10th of* Feb. 1702, written by Dr. *Drake*, as he confeſſed at the Bar, there were ſeveral Expreſſions that were groundleſs, falſe, and ſcandalous, tending to create Jealouſies in Her Majeſty of her People, *&c.* and that the Attorney-General do proſecute the ſaid Dr. *Drake* for the ſame.

The Paſſages in the ſaid Preface, were as follow: And, perhaps, there was a third Thing in Proſpect, of deeper Reach than all theſe; which was, That ſhould it have pleaſed God, for our Sins, to have ſnatched from us the King on the ſudden, by Chance of War or other fatal Accident, during the Tumult of Arms abroad, and the civil Diſorders they had raiſed among us at home, and a numerous, corrupt, licentious Party throughout the Nation, from which the Houſe of Commons was ſometimes not free, they might entertain Hopes from the Advantage at being at the Helm, and the Aſſiſtance of their Rabble, to have put in Practice their own Schemes, and have given us a new Model of Government of their own Projection, and ſo to have procured to themſelves a laſting Impunity, and to have mounted their own Beaſt, the Rabble, and driven the ſober Part of the Nation like Cattle before them.

That this is no groundleſs Conjecture, will readily appear to any conſidering Perſons, from the Treatment her Royal Highneſs the Princeſs of *Denmark*, the Heireſs Apparent to the Crown, met with all along from them and all their Party: They were not contented to ſhew her a conſtant Neglect and Slight themſelves, but their whole Party were inſtructed to treat her not only with Diſreſpect, but Spight: They were buſy to traduce her with falſe and ſcandalous Aſperſions; and ſo far they carried the Affront, as to make her at one Time almoſt the common Subject of the Tittle-Tattle of almoſt every Coffee-Houſe and Drawing-Room; which they promoted with as much Zeal, Application, and Venom, as if a Bill of Excluſion had been then on the Anvil: And theſe were the Introductory Ceremonies.

Reſolution againſt Tom Double.

On *Tueſday* the 12th of *May*, 1702. it was Reſolved by the Lords, That the following Paragraphs in the 89th and 90th Pages of a Book, intitled, Tom Double *returned out of the Country: Or, The true Picture of a Modern Whig*, &c. there are ſeveral Expreſſions which are groundleſs, falſe, and ſcandalous, tending to create Jealouſies in Her Majeſty of her People, and to cauſe great Miſunderſtandings, Fears, and Diſputes, among the Queen's Subjects, *&c.*

The obnoxious Paſſages were theſe, *viz.*

WHIGLOVE. I find we have miſcarried in one great Deſign: The Train would not take: We were very hot upon it, juſt before the Parliament met: All the Whig Coffee-Houſes rung, how neceſſary it was to break into the Acts of Settlement, and to exclude ------.

DOUBLE. Mum, WHIGLOVE. Talk no more upon that Subject, I beſeech you: Freſh Orders are iſſued; and ſince we are not ſtrong enough to make it go, and that on the contrary it has alarmed and provoked all Sorts of Men, we are now directed to ſay, That never any ſuch Thing was intended by our Party; though, God knows, it was the whole Diſcourſe of all our Clubs. Under the Roſe, this was one of thoſe Embrio's that proved abortive upon the 30th of *December* laſt; but, though it be not ſeaſonable to ſtir in it now, never fear our abandoning a wicked Deſign; we never quite lay aſide any Miſchief: However, ſince it has really opened the Eyes of a great many, and weakened our Intereſt amongſt ſeveral of our own Side, whom (with Grief of Mind I ſpeak it,) we cannot work up to be guilty of ſo much Injuſtice; let us take all Occaſions of declaring, That we will not violate theſe Acts upon any Account whatſoever; which we may the more ſafely do, becauſe, you know, 'tis our Principle, Not to think that we are bound by any Proteſtations

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we make, either in private or in publick; and it is one of the great Advantages we have over the reſt of our Fellow-Subjects, That we can fetter the Conſciences of others, while our own are at perfect Liberty.

A Reſolution againſt Doctor Bincks's Sermon of the 30th of January, 1701-2.

On *Saturday* the 16th of *May*, 1702, it was Reſolved by the Lords, That in a Sermon preached the 30th of *January*, 1701-2, in King *Henry* the Seventh's Chapel, before the Lower Houſe of Convocation, by *W. Bincks*, D. D. and Proctor for the Dioceſe of *Litchfield* and *Coventry*, there were ſeveral Expreſſions that gave juſt Scandal and Offence to all Chriſtian People; and that the ſaid Reſolution ſhould be communicated to the Lord Biſhop of *Litchfield* and *Coventry*.

The obnoxious Paſſages were theſe, *viz.*

And firſt, As to the near Reſemblance between the Parties concerned, as well the Actors as the Sufferers, comparing thoſe in the Text with thoſe of the Day.

And here one would imagine the latter were reſolved to take St. *Paul*'s Expreſſion in the moſt literal Senſe the Words will bear, *And crucify to themſelves the Lord afreſh*, and, in the neareſt Likeneſs that could be, put him to an *Open Shame*. If, with Reſpect to the Dignity of the Perſon, to have been born King of the *Jews*, was what ought to have skreened our Saviour from Violence; here is alſo one, not only born to a Crown, but actually poſſeſſed of it. He was not only called King by ſome, and, at the ſame Time, derided by others for being ſo called, but he was acknowledged by all to be a King: He was not juſt dreſſed up, for an Hour or two, in Purple Robes, and ſaluted with a HAIL KING! but the uſual Ornaments of Majeſty were his cuſtomary Apparel: His Subjects owned him to be their King, and yet they brought him before a Tribunal; they judged him; they condemned him; and, that they might not be wanting in any thing to ſet him at naught, they ſpit upon him, and treated him with the utmoſt Contempt. Our Saviour's declaring, That *his Kingdom was not of this World*, might look like a ſort of Renunciation of his Temporal Sovereignty for the preſent, deſiring only to reign in the Hearts of Men; but here was nothing of this in the Caſe before us: Here was an indiſputable, unrenounced Right of Sovereignty, both by the Laws of God and Man: He was the reigning Prince, and the Lord's Anointed; and yet, in Diſpite of all Law, both Human and Divine, he was by direct Force of Arms, and the moſt daring Methods of a flagrant Rebellion and Violence, deprived at once of his Imperial Crown and Life.

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The Fact of this Day was ſuch a vying with the firſt Arch-Rebel, the Apoſtate Angel, *Lucifer*; it was ſuch a going beyond the Old Serpent in his own Way of Inſolence and Pride, that it is no Wonder if he then began to raiſe his Head, and ſet up for Dominion in this World, when thus warmed and enlivened by a fiery Zeal in ſome, and Rage in others, to the Degree of Drunkenneſs, thirſting after, and ſatiating themſelves in Royal Blood; and in which Reſpect only, heated to the Degree of Frenzy and Madneſs, the Plea in my Text may ſeem to have ſome Hold of them, FATHER FORGIVE THEM, FOR THEY KNOW NOT WHAT THEY DO.

Reſolution againſt Toland's Book for the Encouragement of Rebellion.

It was Reſolved alſo, on the ſame 16th of *May*, That there are, in the Pamphlet intitled *Reaſons for Addreſſing his Majeſty, to invite into* England *their Highneſſes the Electreſs Dowager, and the Electoral Prince of* Hanover, *&c.* Aſſertions and Inſinuations, ſcandalous and dangerous, tending to alienate the Affections of the Subject from Her Majeſty, *&c.*

The obnoxious Paſſages were theſe, *viz.*

It appears from Hiſtory, That all free People have ſet aſide the Children of Tyrants, for Reaſons of eternal and univerſal Force, as inheriting the Principles and Deſigns of their Parents, bearing an Affection to their Friends, and owing a Revenge to their Enemies, as more likely to graſp at a greater Power than even their Parents, the better to ſecure themſelves from their Diſgrace; and being under extraordinary Obligations to thoſe Foreign Potentates who protected or reſtored them.

In fine, whether the Abjuration be penal or voluntary (for I cannot doubt of one or the other), I hope Care will be taken that it be tendered, as I ſaid before, to all Manner of Perſons, not excepting the King's Majeſty, or Her Royal Highneſs the Princeſs of *Denmark*. For all the Securities we give to them, they owe this Security to us. Not that I doubt either of them, from which, I am the fartheſt of any Man in the World: But they both of them very well know what Stories and Surmiſes our Enemies have been actively ſpreading to amuſe and intimidate the People. They have whiſpered horrible Things of blind and clancular Bargains. But *Cæſar*'s Wife ought to be unſuſpected as well as innocent.

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Proceedings of the Houſe of Commons againſt Dr. WILLIAM LLOYD, Lord Biſhop of *Worceſter*, and Mr. LLOYD his Son, on the Complaint of Sir JOHN PAKINGTON, in *November* 1702. 2 *Annæ*.

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Reſolutions againſt Dr. Lloyd Biſhop of Worceſter.

ON the 2d of *November* 1702, a Complaint was made to the Houſe of Commons by Sir *John Pakington*, againſt the Lord Biſhop of *Worceſter*, and Mr. *Lloyd* his Son, for Treſpaſſing on the Rights and Privileges of the Houſe of Commons; and, on the 18th of the ſame Month, Sir *John* reduced the Charge againſt the Biſhop and his Son to the following Heads, which he preſented to the Houſe *(viz.)*

1. That, ſoon after the laſt Parliament roſe, the Biſhop of *Worceſter* took upon him to ſend to me to deſiſt from ſtanding to be elected Knight for that County, and to threaten me,

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That if I would not deſiſt, he ſhould think himſelf obliged to ſpeak againſt me to the Clergy.

2. He ſent ſome Letters himſelf, and his Secretary ſent others, to ſeveral of his Clergy, with Directions to make what Intereſt they could againſt me in their ſeveral Pariſhes; and where they could not prevail with ſuch who voted ſingly for me in the laſt Election, to give a Vote for one or both the other Candidates, they ſhould deſire them to ſtay at home, and in order to this, his Lordſhip ſent them Copies of the Poll of their reſpective Pariſhes.

3. He aſperſed me to his Clergy, branding me and my Anceſtors with ſeveral Vices; and at his Confirmations and Viſitations, ſollicited his Clergy to vote againſt me, repreſenting me as very unfit to ſerve in Parliament; and threatning them with his Diſpleaſure, if they did not vote againſt me.

4. He aſperſed me and my Anceſtors to ſeveral of the Laity, who were his Tenants; and threatned them, That if they would not vote againſt me, they ſhould never renew any Eſtate under him; and that he would ſet ſuch Marks upon them, that his Succeſſors ſhould not ſuffer them, nor their Children, to renew any more.

5. Mr. *Lloyd*, the Biſhop's Son, aſperſed me, and gave ſcandalous Characters of me to ſeveral Freeholders, whom he ſollicited to vote againſt me, and told them, I voted for bringing in a *French* Government.

6. The Biſhop's Secretary aſperſed me to ſeveral Freeholders in the like Manner, repreſenting me as unfit to ſit in the Houſe; threatning them with the Biſhop's Diſpleaſure; and ſaid, They might as well vote for the Prince of *Wales*, as for me.

The Houſe, having taken the ſaid Complaint and Articles into their Conſideration, and heard the Witneſſes to every Part of the Charge.

Reſolved, *nemine contradicente*, That Sir *John Pakington* had, by Evidence, fully made out the Charge which he exhibited againſt the Lord Biſhop of *Worceſter*, and againſt Mr. *Lloyd* his Son: And

Reſolved, That it appeared to that Houſe, That the Proceedings of *William* Lord Biſhop of *Worceſter*, his Son, and Agents, in order to the hindering of the Election of a Member for the County of *Worceſter*, has been Malicious, Unchriſtian, and Arbitrary, in high Violation of the Liberties and Privileges of the Commons of *England*.

Then they proceeded to addreſs Her Majeſty to remove the ſaid Biſhop from the Poſt of Lord Almoner to her Majeſty; to whom ſhe gave the following Anſwer:

" I am very ſorry that there is Occaſion for " this Addreſs, againſt the Biſhop of *Wor-* " *ceſter:* I ſhall order and direct, that he " ſhall no longer continue to ſupply the Place " of Almoner, but I will put another in his " Room to perform that Office.

The Commons alſo Ordered Mr. Attorney to proſecute Mr. *Lloyd* for his ſaid Offences, after his Privilege as a Member of the Lower Houſe of Convocation was out.

But in the mean while, between the Time the Commons had Reſolved on the Addreſs to the Queen againſt the Biſhop of *Worceſter*, and their preſenting it, the Lords addreſſed her Majeſty in the Biſhop's Favour, repreſenting, That it was the undoubted Right of every Lord of Parliament, and of every other Subject of *England*, to have an Opportunity of making his Defence, before he ſuffer any Sort of Puniſhment; and therefore humbly deſired Her Majeſty, that ſhe would be pleaſed not to remove the Lord Biſhop of *Worceſter*, from the Place of Lord Almoner, nor to ſhew any Mark of her Diſpleaſure towards him, till he be found guilty of ſome Crime by due Courſe of Law. To which the Queen made the following Anſwer, *(viz.)*

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" I agree, That every Peer and Lord of " Parliament, and indeed every other Perſon, " ought to have an Opportunity of being " heard to any Matters objected againſt him, " before he be puniſhed. I have not yet re- " ceived any Complaint of the Biſhop of *Wor-* " *ceſter*; but I look upon it as my undoubted " Right, to continue or diſplace any Servant, " attending upon my own Perſon, when I " ſhall think proper."------And the Biſhop of *Worceſter*; was immediately after diſmiſſed from the Place of Almoner.

Remarks on the Reſolution of the Lords and Commons.

As to *Fuller*, he was very juſtly cenſured by the Lords, and ordered to be proſecuted, being one of the moſt notorious Cheats and Impoſtors of the Age, having more than once endeavoured to impoſe upon both Houſes of Parliament and the Miniſtry, as appears by his Trial above.

Nor was their Cenſure of Dr. *Drake* at all ſevere: For it is very evident, that King *William* was far from uſing any Endeavours to ſet the Princeſs of *Denmark* aſide; on the contrary, he lived in perfect Friendſhip with her a little before his Death, whatever Miſunderſtandings there might have been before, and even put the Adminiſtration of the Government into the Hands of her neareſt Relations and Friends: The Queen's Uncle, the Earl of *Rocheſter*, was his Prime Miniſter, and the Earl of *Marlborough*, whom that Princeſs chiefly relied on, was made Ambaſſador and Plenipotentiary to negotiate and form a Confederacy with our Allies againſt *France:* Indeed there was a Presbyterian and Republican Faction, that did not ſcruple to declare openly, That they would gladly ſet the Princeſs *Anne* aſide, if it was in their Power; but theſe Men were not at all in King *William*'s Favour at that Time. It was a Juſtice due to the Memory of that Prince, therefore, to declare, That the Report, that the late King intended to exclude her Majeſty from ſucceeding to the Crown, was falſe and groundleſs.

But I don't think there was the like Reaſon to be ſevere upon the Author of *Tom Double*; for he only charges the Republicans with ſuch a Deſign, and not King *William:* And their Lordſhips themſelves were very ſenſible, that *Toland* and *The Obſervator*, the then Scribblers for the Faction, had dared to make a Propoſal of that Nature in Print; and actually cenſured *Toland*'s Libel on that Account.

As to their Reſolution againſt Doctor *Bincks*'s 30th of *Jan.* Sermon, I leave every Man

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Man to judge of it as he is enclined: They fairly left the Doctor to the Cenſure of his Dioceſan; but I never heard he ſuffered for his zealous Declamation on this Occaſion.

Remarks.

The Complaint of Sir *John Pakington* againſt the Biſhop of *Worceſter*, and the Reſolution of the Commons thereupon were exceeding juſt: Never was a more ſcandalous Charge, or more fully proved: Never did a Spiritual Lord interpoſe ſo violently in the Election of a Commoner, by Calumny, Detraction, Threats, and every vile Art, proſtituting his Authority and Character, to gratifie his Revenge on a Gentleman of Quality and Fortune, that ſtood Candidate to repreſent his Country: Every one, who has any Veneration for the Fathers of the Church, muſt, in the Queen's Words, be ſorry there was ſuch Occaſion to complain of a Right Reverend Prelate, who once appeared a glorious Confeſſor of the Church.

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The Arraignment of JAMES BOUCHER, Gent. for *High-Treaſon*, on the 28th of *February*, 1703-4. 2 *Annæ*.

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Boucher's Arraignment.

The Indictment.

THE Indictment charged him with High-Treaſon, in going to *France* and returning to *England* again without Licence, contrary to the Statute of 9 *W.* III.

His Confeſſion.

The Priſoner confeſſed the Fact, pleaded Guilty, and threw himſelf upon the Queen's Mercy; but was told, he muſt apply himſelf elſewhere for Her Majeſty's Pardon: And the

His Sentence, with the Speech of the Chief Juſtice thereupon.

Chief Juſtice proceeded to pronounce Sentence of Death upon him as a Traitor, after he had made the following Speech upon the Occaſion, *viz.*

Mr. *Boucher*, You are, by your own Confeſſion, convicted of High-Treaſon; for which, Judgment of Death is to be pronounced upon you, and which you are to ſuffer under thoſe Circumſtances which the Law hath appointed.

The Fact of which you were accuſed, and have now confeſſed, is, That ſince the 11th Day of *December* 1688, you went into *France* without Licence either from the late King or Queen, and have returned ſince the 14th of *January* 1697, without any Licence under the Privy-Seal, either from the late King or Her Majeſty that now is; which Fact is made High-Treaſon by the Statute of the Ninth Year of the late King.

The Wiſdom and Juſtice in making that Law, will be very evident to any one that will but reflect upon the Poſture of our Affairs at that Time: For in the Year preceeding to that of the making thereof, there was an horrid Conſpiracy, formed from among that Party of Men who had ſo left the Kingdom, to aſſaſſinate the late King; to introduce a Popiſh and *French* Power, for the Subverſion of the Proteſtant Religion, and the Liberties and Properties of the People of *England*; which was managed with that Privacy, and carried on with that Secrecy, that it was not diſcovered, nay, not ſo much as ſuſpected, until it arrived to that Maturity, that it was come to the very Point of being put in Execution.

The Truth of which is very clear, as well by the Proofs produced at the Trials of ſeveral of the Malefactors, as even by their own Confeſſion.

In the following Year the Peace of *Ryſwick* was made, whereby the Intercourſe was reſtored between *England* and *France*. From thence it was evident, that divers of that Party of Men would return into the Realm, thereby to have an Opportunity to revive and carry on that horrid Deſign, in the Succeſs whereof they had been ſo diſappointed; for which, no doubt, they were not a little enraged, and it could not be otherwiſe expected but they would make uſe of it: For thoſe of the ſaid Principles will be guilty of the ſame Practices.

Therefore it was neceſſary to make a Returning into *England*, by any of thoſe who were under theſe Circumſtances, to be ſo very Penal, unleſs they ſhould firſt give Satisfaction to the Government, either of their Innocence or Repentance, and obtain a Licence and Approbation for their Return under the Privy-Seal: For their returning in any other manner, is a Danger to the Queen's Perſon, and her Kingdom.

This Treaſon, though it ſeems, and is, new in the Form, yet it is compounded of an old Treaſon, known in the ancient Law of the Kingdom, which is, that of adhering to the King's Enemies: For what can be thought of thoſe, who, in Time of War, ſhall abandon their own Country, and be harboured and protected in an Enemy's Country, for being of an Intereſt inconſiſtent with, and even repugnant to that of their own.

What your Deſign might be in returning in this manner, whether to revive and purſue thoſe wicked Practices, your own Conſciences is your Witneſs, and will be your Judge; and if that ſhall acquit you, it will be for your Advantage in the World to come. But you are an Offender againſt the Law of the Land, which has made this your Offence to be High-Treaſon, and therefore that Judgment appointed for one guilty thereof muſt be pronounced: And it was pronounced accordingly; but *Boucher* was reprieved, and afterwards pardoned, as I apprehend; for I never heard he was executed, though I was at *London* about the Time he was condemned.

1703-4. 2 & 3 An. Aylesbury *Election.*

Proceedings at Law, and in both Houſes of Parliament, in the Caſe of *Aſhby* and *White*, &c. relating to the Right of Electors, to bring Actions againſt the Return-Officers, in the Years 1703, and 1704. 2 & 3 *Annæ.*

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Aſhby's *Declaration againſt* White, *&c.*

THE Plaintiff *Matthew Aſhby*, brought his Action again *William White*, *Richard Talboys*, *William Bell*, and *Richard Heydon*, Defendants, Conſtables of the Borough of *Aylesbury*, and declared, That on the 26th of *December*, in the 12th Year of King *William* III. a Writ iſſued out of *Chancery*, directed to the Sheriff of the County of *Bucks*, reciting that the King had ordered a Parliament to be held at *Weſtminſter*, on the 6th of *February* then next following, and commanded the Sheriff to cauſe two Knights to be elected for the County, two Citizens for every City, and two Burgeſſes for every Borough: Which Writ was declared to the Sheriff, who made a Precept in Writing under the Seal of his Office, directed to the ſaid Conſtables of the Borough of *Aylesbury*, commanding them to cauſe two Burgeſſes of the ſaid Borough to be elected, *&c.* which Precept was delivered to the Defendants, to whom it belonged to execute the ſame: By Virtue of which Writ and Precept, the Burgeſſes of that Borough being ſummoned, did aſſemble before the Defendants to elect two Burgeſſes; and they being aſſembled in order to make ſuch Election, the Plaintiff *Matthew Aſhby*, then a Burgeſs and Inhabitant of the ſaid Borough, and duely qualified to give his Vote at that Election, was there ready, and offered his Vote to the Defendants for the Choice of Sir *Thomas Lee*, Bart. and *Simon Mayne*, Eſq; and the Defendants were then required to receive and admit of his Vote: That the Defendants, not being ignorant of the Premiſſes, but contriving, and fraudulently, and maliciouſly intending to damnify the Plaintiff, and to defeat him of that his Privilege, did hinder him from giving his Vote, and did refuſe to permit him to give his Vote; ſo that the two Burgeſſes were elected without any Vote given by the Plaintiff, to his Damage of 200 *l.* Upon Not Guilty pleaded, Iſſue was joined, and the Cauſe was tried at the Aſſizes for the County of *Bucks*; and the Plaintiff obtained a Verdict, and 5 *l.* Damages beſides Coſts.

Aſhby *recovers.*

Judgment arreſted in the King's-Bench.

The Defendants thereupon moved the Court of *King's-Bench* in Arreſt of Judgment, inſiſting, That the Action did not lie, and this Point being argued by Counſel, and afterwards by the Court, three of the Judges, *(viz.) Powel*, *Gould*, and *Powys*, were of Opinion the Action would not lie; for that the Judging of Elections belonged *ſolely* to the Houſe of Commons; adding, That this was the firſt Action of the Kind that had been brought; and, if theſe Suits were encouraged, it would make the Return-Officers liable to an infinite Number of Suits. The Lord Chief Juſtice *Holt*, however, differed from his Brethren, being of Opinion, That every Man had a Right to ſue the Return-Officer (if he had a legal Vote), where his Vote was refuſed: But, there being three Judges againſt one, the Conſtables carried their Point; and it was adjudged, That the Plaintiff had no Cauſe of Action.

This Matter being brought before the Houſe of Lords afterwards, by a Writ of Error, the Judges were ordered to deliver their Opinions: Whereupon Sir *Tho. Trevor*, Lord Chief Juſtice of the Common Pleas, and ſeveral other Judges, declared it was their Opinion, That the Houſe of Commons *only* had a Right to judge of Elections, and conſequently *who were the Electors*; and obſerved, That Petitions to that Houſe were frequently founded on Allegations; that ſome of the Voters had no Right, and that others were refuſed that had a Right: Nor had it ever been diſputed but *the Commons were the only proper Judges of this Matter*; adding, That if two independent Juriſdictions ſhould be allowed in the ſame Caſe, this muſt frequently occaſion contrary Judgments, and create great Confuſion in the Execution of ſuch Judgments.

To this it was anſwered, That a Voter had no other Remedy but in a Court of Law: For, ſuppoſing the Perſon was returned he would have voted for, he had no Pretence to complain to the Houſe of Commons; and if they could admit of ſuch a Complaint, they could give him no Damages to make him Satisfaction for the Officer's denying his Vote. And ſince this was a Right inherent to every Voter, it was reaſonable an Action ſhould be brought for it in the Courts of Law, where all other Rights were tried. That, if this Determination of the *King's-Bench* was allowed, it would amount to an Indemnity for the Return-Officers, how partial or unjuſt ſoever they ſhould prove, and exceedingly multiply theſe Diſorders: And to this latter Opinion their Lordſhips agreeing, confirmed the Verdict given for *Aſhby* the Plaintiff at the Aſſizes, over-ruled the Determination of the Court of *King's-Bench*, and gave Judgment for *Aſhby* the Plaintiff.

Judgment for Aſhby *in the Houſe of Peers.*

The Commons, upon this Deciſion of the Houſe of Lords, Reſolved,

Reſolutions of the Commons thereupon.

1. That, according to the known Laws and Uſage of Parliament, it was the ſole Right of the Commons (except in Caſes otherwiſe provided for by Act of Parliament) to examine and determine all Matters relating to the Right of Election of their own Members.

2. That neither the Qualification of an Elector, or the Right of any Perſon elected, is cognizable or determinable elſewhere than before the Commons, except as aforeſaid.

3. That the examining and determining the Qualification or Right of any Elector, or any Perſon elected in any Court of Law, or elſewhere than before the Commons, except as aforeſaid, will expoſe all Mayors, and other Return-

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Return-Officers, to Multiplicity of Actions and Vexatious Suits, and ſubject them to different and independent Juriſdictions, and inconſiſtent Determinations.

4. That *Matthew Aſhby* having brought his Action againſt *White* and the reſt of the Conſtables of *Aylesbury*, for not receiving his Vote, was guilty of a Breach of Privilege.

5. That whoever ſhall commence or proſecute any Action, Indictment, or Information, which ſhall bring the Right of the Electors or Elected to the Determination of any other Juriſdiction than the Houſe of Commons, except as aforeſaid, ſuch Perſons, and all Attorneys, Sollicitors, Counſellors, and Serjeants at Law, ſolliciting, pleading, or proſecuting in any ſuch Caſe, are guilty of a high Breach of the Privilege of this Houſe. And theſe Reſolutions were ordered to be fixed on *Weſtminſter-Hall* Gate, ſigned by the Clerk.

Reſolutions of the Lords contra.

On the other Hand the Lords Reſolved,

1. That, by the known Laws of this Kingdom, every Freeholder, or other Perſon, having a Right to vote at the Election of Members to ſerve in Parliament, and being willfully denied or hindered ſo to do by the Officer who ought to receive the ſame, may maintain his Action againſt ſuch Officer, and recover Damages for the Injury.

2. That the aſſerting that a Perſon, having Right to give his Vote at any Election, and being hindered ſo to do by the Officer, who ought to take the ſame, is without Remedy for ſuch Wrong, by the ordinary Courſe of Law, is deſtructive of the Property of the Subject, againſt the Freedom of Elections, and manifeſtly tends to encourage Corruption and Partiality in Officers, who are to make Returns in Parliament, and to ſubject the Freeholders, and other Electors, to their arbitrary Will and Pleaſure.

3. That the declaring *Matthew Aſhby* guilty of a Breach of Privilege of the Houſe of Commons for proſecuting his Action againſt the Conſtables of *Aylesbury*, after he had obtained a Judgment in Parliament for Recovery of his Damages, is an unprecedented Attempt upon the Judicature in Parliament; and is, in Effect, to ſubject the Law of *England* to the Votes of the Houſe of Commons.

4. That the deterring Electors from proſecuting Actions in the ordinary Courſe of Law, where they are deprived of their Right of voting; and the terrifying Attorneys, Sollicitors, Counſellors, and Serjeants at Law, from ſolliciting, proſecuting, and pleading in ſuch Caſes, by voting their ſo doing to be a Breach of Privilege of the Houſe of Commons, is a manifeſt aſſuming a Power to controul the Law, to hinder the Courſe of Juſtice, and ſubject the Property of *Engliſhmen* to the arbitrary Votes of the Houſe of Commons.

But notwithſtanding the Commons had Reſolved that *Aſhby* was guilty of a Breach of Privilege in commencing an Action againſt *White*, and the reſt of the Conſtables of *Aylesbury*, they did not proceed to take *Aſhby*, or his Counſel, Attorney or Agents, into Cuſtody for it; and the Parliament was no ſooner up, but *Aſhby*'s Attorney, *Robert Mead*, executed the Judgment againſt the Conſtables of *Aylesbury*, and brought Actions of the like Nature for *John Paty*, *John Oviat*, *John Paton*, jun. *Henry Baſſe*, and *Daniel Horne*, five more *Aylesbury* Men, againſt the ſaid Conſtables, for refuſing them Votes at the Election of Members to ſerve in Parliament for the ſaid Borough of *Aylesbury*.

The Judgment executed againſt the Conſtables.

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Five Actions brought againſt them.

Whereupon, the Parliament meeting again in the Month of *October* 1704, Complaint was made to the Houſe of Commons, of the Execution of the ſaid Judgment againſt the Conſtables of *Aylesbury*, at the Suit of *Aſhby*; and of the five new Actions brought by *Mead* the Attorney, in the Name of the other five *Aylesbury* Men: And the Serjeant at Arms was ordered to take the ſaid Attorney, and the five *Aylesbury* Men, into Cuſtody; but the Attorney was ſo wiſe as to keep out of the Way, though his Clients were brought before the Houſe by the Serjeant on *Tueſday* the 5th of *December*, when Mr. *Crabb*, the Attorney for the Conſtables (the Defendants) produced five Declarations, which *Mead*, the Plaintiff's Attorney, had delivered him, againſt the ſaid Conſtables, being all of the ſame Tenour with that of *Aſhby*'s againſt the Conſtables, for refuſing their reſpective Votes. And one of the Declarations being read, and the Plaintiffs examined thereupon, the Houſe Reſolved, That *John Paty*, and the reſt of the Plaintiffs, had been guilty of commencing and proſecuting Actions at Common Law, againſt *William White*, and others, late Conſtables of *Aylesbury*, for not allowing their reſpective Votes in the Election of Members to ſerve in Parliament, contrary to the Declaration, in High Contempt of the Juriſdiction, and in Breach of the known Privileges of that Houſe: And ordered them all to be committed to *Newgate* by the Speaker's Warrant, which was done accordingly.

The five Aylesbury Men taken into Cuſtody by the Commons.

An Habeas Corpus brought by the Aylesbury Men,

and a Writ of Error petitioned.

The Houſe, being informed on the 24th of *February*, that there had been Endeavours to bring a Writ of Error on the Proceedings in the Conrt of *King's-Bench*, upon a *Habeas Corpus* granted there for the Perſons committed by that Houſe to *Newgate*, for Breach of their Privilege, thereby to bring the Commitments of that Houſe under the Examination of the Houſe of Peers, addreſſed Her Majeſty, laying before her, the undoubted Right of the Commons of *England* to commit for Breach of Privilege; and that the Commitments of the Houſe were not examinable in any other Court whatever, and that no ſuch Writ of Error was ever brought, nor did any Writ of Error lie in that Caſe. And as that Houſe had expreſſed their Duty to Her Majeſty, in giving Diſpatch to all the Supplies; ſo they had an entire Confidence in Her Majeſty's Goodneſs and Juſtice, That ſhe would not give Leave for the bringing any Writ of Error in this Caſe which would tend to the overthrowing the Rights and Privileges of the Commons of *England*.

The Commons Addreſs againſt the Writ of Error.

The Queen's Anſwer.

To which Addreſs Her Majeſty anſwered, She was much troubled to find the Houſe of Commons of Opinion, That her granting the Writs of Error, mentioned in their Addreſs, was

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was againſt their Privileges, of which her Majeſty would always be as tender as of her own Prerogative; and therefore the Houſe of Commons might depend on it, Her Majeſty would not do any Thing to give them any juſt Occaſion of Complaint: But this Matter, relating to the Courſe of Judicial Proceedings, being of the higheſt Importance, Her Majeſty thought it neceſſary to weigh and conſider very carefully, what might be proper for her to do in a Thing of ſo great a Concern.

The Counſel and Attorneys for the Priſoners ordered into Cuſtody.

The ſame Day the Commons Reſolved, That Mr. *Francis Page*, Mr. *James Montague*, Mr. *Nicholas Lechmere*, and Mr. *Alexander Denton*, who had been concerned in pleading upon the Return of the *Habeas Corpus*, on behalf of the Priſoners committed by that Houſe, were guilty of a Breach of Privilege; and Ordered them to be taken into Cuſtody of the Serjeant at Arms.

They alſo Ordered the five *Aylesbury* Men to be removed from *Newgate*, and delivered into the Cuſtody of their Serjeant at Arms; which was done accordingly.

But examining the Serjeant the next Day, as to the Counſellors at Law he was ordered to take into Cuſtody, he anſwered, That he had taken Mr. *James Montague* into Cuſtody, who ſhewed him a Protection from the Houſe of Lords (granted at the Petition of the five *Aylesbury* Men) by which, the ſaid Mr. *Montague*, Mr. *Page*, Mr. *Lechmere*, and Mr. *Denton*, at alſo Mr. *Lee* and Mr. *Harris*, the Attorneys in the Cauſe, were aſſigned Counſel and Attorneys for the ſaid Perſons impriſoned, and protected by the Houſe of Lords: And all Officers, Serjeants at Arms, and other Perſons, were thereby forbid to meddle with them.

That he had like to have taken Mr. *Nicholas Lechmere*, but he got out of his Chamber in the *Temple*, two pair of Stairs, at the back Window by the Help of his Sheets and a Rope; and that the ſaid *Harris* was alſo taken into Cuſtody, but that Mr. *Page*, Mr. *Denton*, and Mr. *Lee*, were not to be found.

An Abſtract of the Proceedings in the Court of Kng's-Bench.

I ſhall in the next Place, look back to the Proceedings in the King's-Bench, *which gave Birth to theſe extraordinary Reſolutions of the Commons, in relation to the Five* Aylesbury *Men, and their Counſel, and Attorneys.*

The Five *Aylesbury* Men above-mentioned having been committed to Newgate by the Commons, as related above, in *Michaelmas* Vacation, 1704, prayed Writs of *Habeas Corpus* in order to be admitted to Bail: Whereupon all the Judges aſſembled, and reſolved unanimouſly, That they were not bailable; and thereupon the Priſoners were remanded to *Newgate*.

In *Hillary* Term following, the Priſoner's Counſel moved the Court of *Queen's-Bench* for Writs of *Habeas Corpus*, which were granted, and upon the Return thereof, that Court deſiring the Aſſiſtance of all the Judges they were all of Opinion, except the Lord Chief Juſtice *Holt*, That they ought to be remanded to *Newgate*.

The Priſoner's Council on this Occaſion, were, Mr. *Page*, Mr. *Montague*, Mr. *Lechmere*, and Mr. *Denton*, who inſiſted, That there was no Breach of Privilege returned: That it did not appear the Priſoners were any ways related to the Houſe of Commons, either as Members or Officers. They agreed, every Court had Power to keep Order among themſelves; but to take a Man out of the Houſe, who was not of the Houſe, or guilty of any Breach of Privilege, for ought appeared by the Return, they knew no Law for it: That the bringing an Action was no Crime by any known Law: That there was a Judgment at Law againſt the Conſtables of *Aylesbury*, which could not be got over till ſome Act of Parliament interpoſed; and the Law being ſo, they did not know any Crime in bringing this Action, while the former Judgment remained on Record.

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That as to the bringing an Action againſt the Commons Declaration, they muſt oppoſe the Declaration of the Lords to it; and that Privileges againſt the known Laws of the Land were void in themſelves: That though both Houſes were proper Judges of their own Privileges, yet that Court had formerly judged of their Privileges: That in the Caſe of the Lord *Banbury*, though the Houſe of Peers declared he was no Peer, yet, when he was proſecuted for Murder in that Court, and inſiſted on his Peerage, the Court allowed his Plea, and refuſed to try him.

That, had it been a general Commitment, without ſhewing the Offence, and ſaid to be for a Breach of Privilege, only, it might have been a good Commitment; but here the Cauſe being ſet forth, and it appearing by the Judgment of the Lords, in the Caſe of *Aſhby* and *White*, That this was no Cauſe for a Commitment, they ought to be bailed: That the Queen Herſelf could not, by a Commitment, exclude the Subject from the Benefit of the Law, and prevent his being bailed by this Court upon Cauſe ſhewn, much leſs the Houſe of Commons.

The Caſe was afterwards argued by the Judges, who were all (except the Lord Chief Juſtice *Holt*) of Opinion, They ought to he remanded.

The Judges remand the Priſoners.

They held, That, as the Priſoners were committed by a ſuperior Authority, they had nothing to do to intermeddle with it: That there had been no Caſe or Opinion cited, where the Courts of *Weſtminſter-Hall* undertook to judge of the Authority of the Houſe of Commons; or, that the Orders and Commitments of the Houſe of Commons, were diſcharged in *Weſtminſter-Hall*; which was a good Argument, they had no Power to do it: The Reſolution of the Commons upon a Breach of Privilege, was a Judgment; and the Commitment, an Execution; which could not be controuled. The Houſes of Parliament reſpectively were ſole Judges of their ſeveral Privileges; and where there was a Diſpute between the two Houſes about them, the only Method that had ever been taken to adjuſt them, had been by Conferences: That the Reſolution of the Lords, in the Caſe of *Aſhby* and *White*, did not bind the Commons, or determine their Privileges: and it would be a ſtrange Thing, if the Houſe of Commons ſhould have Power to examine and judge of

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Lord Chief Juſtice Holt's Reaſons for Bailing them.

of a Breach of Privilege, and have no Power to puniſh the Breach of it.

The Lord Chief Juſtice *Holt*, on the other Hand, gave the following Reaſons, why he did not think this a legal Commitment: He ſaid, This Caſe depended on the Vote that was recited in the Speaker's Warrant, *(viz.) That it did appear to that Honourable Houſe, that* John Paty, *&c. had been guilty of commencing and proſecuting an Action at Common Law, againſt* W. White, *and others, late Conſtables of* Aylesbury, *for not allowing his Vote in an Election of Members of Parliament, contrary to the Declaration, in high Contempt of the Juriſdiction, and in Breach of the known Privileges of this Houſe.*

That he owned himſelf to lie under two Diſadvantages; one, That all the reſt of the Judges do agree with his three Brethren, from whom he had the Misfortune to diſſent; the other, That he oppoſed the Votes of the Houſe of Commons, and did begin to think, he might juſtify himſelf in reſigning his Opinion to the reſt; but that he valued more the Dictates of his own Conſcience, than any thing he could ſuffer in this World; and by that and his Judgment (though it were but weak) he would be guided.

That this was not ſuch an Impriſoment as the Freemen of *England* ought to he bound by; and that it did highly concern the People of *England*, not to be bound by a Declaration of the Houſe of Commons, in a matter that before was lawful.

That neither Houſe of Parliament has a Power ſeparately to diſpoſe of the Liberty or Property of the People, for that cannot be done, but by the Queen, Lords, and Commons, and this is the Security of our *Engliſh* Conſtitution, which cannot be altered, but by Act of Parliament.

That there is a Crime charged by the Vote for commencing an Action; but ſure, that cannot be a Breach of Privilege: For an Original may be filed againſt a Member of Parliament, during the Time of Privilege, ſo that you don't moleſt him, and it is no Breach of Privilege; as it was reſolved in Sir *George Benion*'s Caſe, 14 *Car.* II. for otherwiſe, by Lapſe of Time in ſeveral Actions, he may be barred by the Statute of Limitations: So that if it be not a Breach of Privilege to commence an Action againſt a Member of Parliament, then how can it be ſo, to commence an Action againſt the Conſtables of *Aylesbury?*

But then the Vote goes further, and ſays, For commencing and proſecuting an Action: But proſecuting may not be a Breach of Privilege neither; for entering and Continuing, is Proſecuting, which may be done without a Breach of Privilege.

That it does not appear that the Conſtable of *Aylesbury* has any Privilege above another Perſon; for no Man is preſumed to be privileged, unleſs it be ſhewn; and he has no Privilege as Conſtable.

That the Vote goes yet further, and ſays, For not allowing his Vote in an Election of Members to ſerve in this preſent Parliament: But this can be no Crime.

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That he admitted they were Judges of their own Privileges; but the Law muſt alſo be obſerved. By 2 *Ric.* III. *Fol.* 9. it appears it was no Crime by the Common Law, to bring an Action, though never ſo malicious, falſe or groundleſs, where it is adjudged, that there was no Puniſhment for it; becauſe it was in a Method of Juſtice: But when Buſineſs began to increaſe, Coſts were given againſt the Plaintiff by 23 *Hen.* VIII. for bringing an Action cauſeleſsly. A Peer cannot have an Action of *Scandalum Magnatum*, where there is no Cauſe for the Action wherein he is charged with Scandal: So much the Law regarded the Right of bringing Actions.

That when Subjects have ſuch a Right to bring Actions, it cannot be ſtopped by Privilege of Parliament; for no Privilege of Parliament can extend ſo far as to deſtroy a Man's Right.

That it has been adjudged a good Action by the Law of the Land; and that Damages may be recovered for the Injury, in not allowing his Vote; and this Action is the ſame as *Aſhby* and *White*, which lies before us; and if we conſult the Records, we ſhall find it to be the ſame.

That the latter Part of this Vote, is, That the proſecuting this Action is contrary to the Declaration, in high Contempt of the Juriſdiction, and in Breach of the known Privileges of this Houſe.

That the Privileges of the Houſe of Commons are limited; for there is no Privileges in Caſe of Treaſon, or Felony, or Breach of the Peace: For a Juſtice of Peace may commit a Member for Breach of the Peace; and if he ſhould be indicted for it, his Plea of Privilege would not be allowed.

That nothing can make a Privilege, that was not ſo before (for the Breach of which a Man ſhall looſe his Life,) but an Act of Parliament.

That each Houſe is judge of their own Privileges, becauſe they are more converſant with the Privileges of their own Houſe; ſo the Judges decline it: But if they come incidently before the Courts of Law, they muſt determine it there.

That ſuppoſe the Houſe of Commons had not meddled in this Matter, but the Defendants in this Action had pleaded to the Juriſdiction of this Court, That this was a Matter examinable only in the Parliament, and the Plaintiff had demurred; we muſt then have determined it, and be Judges then of their Privileges.

Coke's 1 Inſt. *Lex & Conſuetudo Parliamenti ab omnibus querenda, a multis ignorata, a paucis cognita*; and the Reaſon 'tis known by ſo few is, becauſe they do not ſeek for it. We are bound to take Notice of the Cuſtoms of Parliament, for they are Part of the Law of the Land; and there are the ſame Methods of knowing it, as the Law in *Weſtminſter-Hall.*

In *Clarendon*'s Hiſtory, *Part* I. *Fol.* 310. He was Lord Chancellor of *England*, a Man of great Probity and Learning: His Obſervations touching Privileges of Parliament are theſe.

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It is not to be believed, how many ſober, well-minded Men, who were real Lovers of the Peace of the Kingdom, and had a full Submiſſion and Reverence to the known Laws, were impoſed upon, and had their Underſtandings confounded, and ſo their Wills perverted, by the meer Mention of Privilege of Parliament; which, inſtead of the plain and intelligible Notion of it, was, by the Dexterity of theſe Bouteſeus, *and their Agents, and the Sottiſhneſs of the People, rendered ſuch a Myſtery, as could be only explained by themſelves, and intended as far as they found neceſſary for their Occaſions, and was to be acknowledged a good Reaſon for any Thing that no other Reaſon could be given for. We are, ſay they, and have been always confeſſed, the only Judges of our own Privileges, and whatſoever we declare to be our Privileges, are ſuch; otherwiſe, whoſoever determines that it is not ſo, makes himſelf Judge of that whereof the Cognizance belongs only to us. And this Sophiſtical Riddle perplexed many, who, notwithſtanding the deſperate Conſequence they ſaw muſt reſult from ſuch Logick, taking the firſt Propoſition for true, which being rightly underſtood is ſo, have not been able to wind themſelves out of the Labyrinth of the Concluſion: I ſay, the Propoſition rightly underſtood, they are the only Judges of their own Privileges; that is, upon the Breach of thoſe Privileges which the Law hath declared to be their own, and what Puniſhment is to be inflicted upon ſuch Breach; but there can be no Privilege, of which the Law doth not take Notice, and which is not pleadable by and at Law.*

The ſame Part, Page 312. *But that their being Judges of their Privileges ſhould qualify them to make new Privileges, or that their Judgment ſhould create them ſuch, as it was a Doctrine never before heard of, ſo it could not but produce all thoſe monſtrous Effects we have ſeen: When they have attempted to ſwallow all the Rights and Prerogatives of the Crown, the Liberties and Lands of the Church, the Power and Juriſdiction of the Peers; in a Word, the Religion, Laws, and Liberties of* England, *in the bottomleſs, and inſatiable Gulph of their own Privileges.*

That he had yet a greater Authority than this, the Opinion of King *Charles* I. in his Anſwer to the 19 Propoſitions from both Houſes of Parliament, in Lord *Clarendon*'s Hiſtory, *Part* I. *Page* 498, which Anſwer is in the King's own Words, in *Ruſhworth*'s Collections, 3 *Vol. Part* I. *Page* 725, 730, 731.

That though the bringing this Action be contrary to the Declaration, it does not follow, therefore, that it muſt be a Breach of Privilege; for this Vote has not obtained the Authority of a Law, and they have no more Power to declare the Law, than they have to make a Law.

That if bringing an Action is a Breach of Privilege, why was not *Aſhby* laid hold on? He proſecuted to Judgment and Execution; but theſe Perſons are committed for commencing an Action.

How can the bringing an Action in one Court be a Contempt to another?

If a Man that has a Privilege in one Court, is ſued in another, he ſhall have his Privilege: But it is no Contempt in the Plaintiff that he ſues in another Court, and there is no Puniſhment for it; much leſs can it be a Contempt to the Houſe of Commons, where no Action can be brought. 1703-4. 2 & 3 An.

That he admitted, the Houſe of Commons may commit any Perſon, and for any Crime, becauſe they may impeach any Perſon for any Crime whatſoever; but that Courſe is ſeldom taken, unleſs where the Crime requires a ſtrict Proſecution, and very much concerns the Publick.

That the Lord *Shaftesbury*'s Caſe is not like this; for he was a Member of the Houſe, and it was for a Contempt in the Houſe.

The Houſe may, at any Time, commit a Man for a Contempt in the Face of the Houſe; whereas the Priſoners are committed, not for a Breach of Privilege, or Contempt, but becauſe they have brought their Actions, which are legal, and ſo adjudged by the Lords in the Writ of Error.

That he did not queſtion but that the Warrant was a good Warrant.

That *lex & conſuetudo Parliamenti*, is as much the Law of the Land, as any other Law. 'Tis the Law gives the Queen her Prerogative: 'Tis the Law gives Juriſdiction to the Houſe of Lords; and 'tis the Law limits the Juriſdiction of the Houſe of Commons.

That if the Eccleſiaſtical Court exceed their Juriſdiction, a Prohibition will lie; and even the King's Acts, if contrary to Law, are void.

He inſiſted, That the Lord *Banbury*'s Caſe was a great Authority for him.

He petitioned the Houſe of Lords to ſit, and alſo to have the King's Leave: The Lords determined he was not a Lord; yet, when he was brought before the Court of *King's-Bench* upon an Indictment, by the Name of *Charles Knollys*, Eſq; he here pleaded, and inſiſted, That he was a Peer; which Plea was allowed, and he was not tried.

I proceed in the next Place, to give ſome ſelect Speeches that were made in the Houſe of Commons on this Occaſion.

A Speech of Sir Simon Harcourt's *againſt the Action.*

Sir *Simon Harcourt*. It hath been ſaid, That the Queſtion now before you is, Whether Judgment being given in the Court of *Queen's-Bench*, a Writ of Error does not lie in the Houſe of Lords to reverſe that Judgment? I cannot, by any Means, agree that to be the Queſtion.

But that which I take to be the proper Queſtion before you is, Whether or no it be the ſole Right of the Commons of *England* to determine their own Elections? If you are of that Opinion, never let your Diſeaſe grow to ſuch a Head as to put you upon the Neceſſity of complaining of a Judgment of the Lords, but rather check it in its Infancy.

It may, perhaps, ſound harſh, That a Man ſhall not be admitted to make Uſe and have the Benefit of the Law; and yet, when that Law is thoroughly digeſted, I believe no Gentleman in this Houſe, but will agree, That there may be many ſuch Inſtances, where you will not endure any Suit at Law. I cannot give you any better Inſtances than what have been mentioned to you by a learned Gentleman on the other Side, who approves of this

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Proceeding by Writ of Error; the Proſecution againſt Sir *William Williams*, for publiſhing a Libel (as it was called) by Direction of this Houſe and an Action againſt the Serjeant for obeying your Commands. If ſuch an Action ſhould be brought againſt the Speaker or Serjeant, ſhould we ſit ſtill here to ſee what they would do in the Courts below, and afterwards wait for the Event in the Houſe of Lords by Writ of Error?

'Tis very true, theſe Judgments that are mentioned by that Gentleman continue ſtill unreverſed. As to that given againſt the Speaker, he mentioned it as a Precedent not fit to be followed: Indeed, 'tis a Reproach to the Houſe to mention it, ſince no Parliament has reverſed it. As to the other Action, againſt the Serjeant, he ſays, Judgment was given againſt him, and that ſtands in full Force; as I remember that Caſe, it went off upon the Form of Pleading.

But nothing of that Kind being the Queſtion now, I beg Leave to ſtate what this Action is that is now before us: For Gentlemen in the Country, who have frequently met with Actions proſecuted without Cenſure, for Matters relating to the Elections, may perhaps be ſurprized, till they come to conſider what the Point is. This is not an Action grounded upon any Statute whatſoever. 'Tis agreed, an Action may be maintained, where a Statute gives a particular Remedy; but this is an Action founded upon the Common Law. Whatever your Privileges are, if you will conſent to an Act of Parliament to make other Perſons Judges of thoſe Privileges, ſo far as you conſent, if they purſue the Power given them by Act of Parliament, there is no Wrong done you: But an Action brought at Common Law, is that which I think, interferes with the inherent Right of this Houſe.

We have, I think, attained to one Piece of Knowledge upon this Debate, That this was the firſt Action that was ever brought of this Kind; and Gentlemen will not much wonder why this is brought now, when they conſider what Endeavours have been uſed to make this Houſe contemptible. I believe this may be thought the moſt probable Method to attain that End.

I would not repeat the Precedents that have been quoted; yet I cannot but take Notice of that of *Barnardiſton* and *Soame:* Thoſe Arguments that were made uſe of for this Judgment in that Caſe were rejected; and the Judgment of the Lords was then directly contrary. I ſhould be very glad to hear how the Lords Judgment of Reverſal, in that Caſe and in this, are reconcilable. The Commons at that Time, would ſcarce have ſuffered ſuch an Attempt upon their Privileges; and I hope we ſhall be as careful and as zealous to preſerve ours: We have as much Power as our Predeceſſors; we ſhall never ſuffer for Want of Power, if we do not ſuffer for Want of Will to exert it.

I expect to hear of the great Authority of one learned Judge, that differed from the reſt: I have the utmoſt Eſteem for his Judgment; but am ſorry to hear any Inſinuation, that thoſe Judges who have given their Opinion otherwiſe, are guilty of a Breach of their Oaths. It hath been touched upon, That, whenever any Queſtion has been asked the Judges concerning the Privileges of the Lords, or the Privileges of the Commons, their Anſwer is recorded for the Inſtruction of all their Succeſſors, and to the Honour of both Houſes of Parliament, That it was a Matter above their Knowledge: The Law of Parliament is above the Judges of the Common Law, and is not to be ſubject to their Judgment; 'tis *alieni fori*.

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And, Sir, as I have been informed, this was the Anſwer given in the Houſe of Lords by one of the preſent Judges; and, by what I have heard, it was well he eſcaped their Cenſure; ſhewing too much Reſpect to this Houſe, gave very great Offence.

I beg, Gentlemen, to conſider (I ſhall not enter into Particulars that have been mentioned), Whether any Thing of this Kind would not make you deſpicable to the loweſt Degree in the World, and expoſe Electors to ſuch Miſchiefs that none could endure? Upon every Election that comes before you, 'tis impoſſible to judge the Right of Election, but by the Right of the Electors. If you will endure any Perſon, after you have ſaid he has no Right, to go into *Weſtminſter-Hall*, and bring an Action in the Courts there, a Jury may find a Verdict, That the Houſe of Commons are miſtaken, and that this Perſon hath a Right; and Judgment ſhall be given accordingly. Will not this Proceeding, that very Moment, ſubmit your Reſolutions to the Examination and Cenſure of the inferior Courts? May not they ſay, They vote for one another? We have detected them all? That they are a Parcel of People packed together, and not one of them elected as they ſhould be?

What Condition the Magiſtrate will be in, hath been mentioned already: When a Multitude hath a Right, and every body may bring his Action, can any Magiſtrate (a Conſtable, as in this Caſe) bear the Expences of 100 or 1000 Actions at Law? There will not be wanting ſome to proſecute a Magiſtrate with all the Violence poſſible.

Though I can by no Means agree, That this Matter is to be determined according to the common Rules and Methods of Law, but according to the Courſe of Parliament; yet I ſhall compare it with ſome other Caſes in the Law.

That which maketh theſe Perſons Hardſhips the greater is, Theſe Magiſtrates are not People that officiouſly interpoſe to take a Poll at Elections, and make a Return; but theſe are Men, who, by the Duty of their Office, are obliged to do it; and, if they do not execute their Office, you puniſh them; and, if they do execute their Office, and give you Satisfaction, yet, if you let this be examined in another Place, after you have ſaid they have done well, they may be puniſhed for doing ſo.

I will compare this with one or two common Caſes that have not been mentioned. Suppoſe a Perſon ſhould exhibit an Indictment againſt another maliciouſly, he does this wilfully, and an Action does lie againſt him; but, if a Grand Juryman find a Bill againſt

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a Man, the Law will not admit an Averment, that it was done maliciouſly, becauſe he was obliged by his Office to do it. So it is in the Caſe of a Witneſs, becauſe he is brought in by the Proceſs of the Court: So it is in the Caſe of Judges. And is it not equally the Duty of a Magiſtrate to determine upon the Poll, and afterwards to make a Return? And is not that examinable before you?

A great deal might be ſaid further upon this, but I hope it is pretty unneceſſary; and that nobody can have any Doubt, but that our Privileges are very much concerned in this Queſtion, and what the Conſequences would be; therefore I would humbly propoſe for the Queſtion, what another Gentleman hath hinted at, which may reduce this Debate to a particular Point.

We certainly have ſuch a Thing as the Law and Cuſtom of Parliament, and that is very well known; and upon that Foot I deſire you would put a Queſtion to this Effect.

" That the ſole Right of examining and " determining all Matters relating to the E- " lection of Members to ſerve in Parliament, " except in ſuch Caſes as are otherwiſe pro- " vided for by Act of Parliament, is in the " Houſe of Commons; and that neither the " Qualifications of the Electors, or the Right " of the Perſons elected, is elſewhere cogni- " zable or determinable.

A Speech of Mr. Dormer's *for the Action.*

Mr. *Dormer* (afterwards a Judge) Mr. *Freeman*, you have now a Queſtion upon your Paper; but that which I take to be the Queſtion, is, " Whether a Freeholder, or a Freeman, " who hath a Right to give his Vote for his " Repreſentatives in Parliament, may arbi- " trarily and maliciouſly be deprived of that " Privilege, without any Redreſs in any Court " whatſoever.

This I take to be the Caſe before you: It is ſaid to be of great Conſequence, and I do take it to be of as great Conſequence as any Thing that ever came before either Houſe; and I don't look upon it only to concern the Juriſdiction of the Lords and Commons, but to effect every Part of the Conſtitution, and the Queen, the Head thereof, in the higheſt Degree: For it comes to this, If the Lords have not a Right to determine in this Matter, which by Writ of Error is regularly brought before them, we ſhall be turned into a State of Villenage, and the People will be deprived of chuſing their own Repreſentatives without Relief, and ſhall not have Relief by Her Majeſty in the Court of *Queen's-Bench*, nor before Her in the Court of Parliament, where, in Conſideration of Law, She is always preſent, and whereby our Law is the laſt Appeal; and there will be a Failure and an Interruption of Juſtice; and our Conſtitution, in relation to ourſelves, will be ſo far changed, that it will be impoſſible there ſhould be any right Repreſentatives of the People; for it will not be the People then that will chuſe, but the Officer may arbitrarily refuſe, and return whom he thinks fit, and the particular Perſon will be without Remedy. For, whatever Gentlemen apprehend, if the Right of Return be not controverted, which Way can any particular Man bring his Caſe before you? and what Remedy ſhall he have, if not by Action? I will not ſay there has not (but I will turn the Argument, and put it upon them to ſhew there has), but I believe there was never any particular Application to the Committee of Privileges, where the Injury has been done to a particular Man, which is the preſent Caſe; and this Matter is found by a Jury that was ſtruck, and not one Man of the Jury but of Quality, and approved on both Sides: And I think, though it never came before the Parliament, nor the Committee of Privileges, they might conſider of a particular Injury.

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And as for the Notion that has been taken up, That where the Houſe of Commons have a Juriſdiction, there the Party is, in all Caſes, without Remedy in any other Court: Sure, that is not according to Truth; for in the Caſe of a falſe Return, there is a publick Injury; that does not hinder the Party from obtaining Satisfaction as to his particular Injury; and if no Action lies, there can be no Satisfaction; for this Houſe hath not awarded Damages in any Caſe, notwithſtanding the Caſe cited; for that was only Coſts for the Man's Trouble, in coming up to be examined before this Houſe; and if they ſhould award Damages, there is no Way of levying thoſe Damages; what Writ can we iſſue out? And if this Perſon be without Remedy at Law, he muſt ſit down without any Redreſs whatſoever.

There may be a Multitude of Caſes where this Houſe hath a Juriſdiction, as far as concerns the Publick and themſelves, and the Party ſhall have his Action alſo.

If I receive a Blow in this Houſe, it is a Violation of the Privilege of this Houſe, and this Houſe can take Cognizance of it, and cenſure the Perſon that hath done the Injury; but will any Man ſay, That an Action of Battery will not lie at the Common Law in that Caſe?

There was the Caſe of Sir *Thomas Clarges*: At the Time of his Election, there was one *Roe* ſpoke Words to his Prejudice; he might certainly have complained to this Houſe of it, (you had an Inſtance, I think, laſt Seſſion, of one that complained for ſome ſuch Injury againſt the Lord Biſhop of *Worceſter*, and the Houſe took it into Conſideration, which Sir *Thomas Clarges* might have done); but he brought his Action, and recovered conſiderable Damages; and afterwards a Writ of Error was brought in the *King's-Bench*, and Judgment was affirmed.

There is a Caſe, not within any Proviſion of your Law, and that is, where a Sheriff made a Return, and he delivered this to a private Meſſenger, to bring up to the *Crown-Office*: The Meſſenger by the Way thought fit to vitiate the Return, and make another Return than what he received from the Sheriff: For this an Action was brought, and he recovered at Law againſt this Meſſenger, for the private Damage he had done him. Certainly, otherwiſe, the Law would be defective.

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In another Caſe, the Sheriff adjourned, in Prejudice to a Candidate, to a Corn-Field; an Action was brought againſt this Sheriff at Law, for the Damages he had done this Gentleman, and it was maintained; and I dare ſay, more Caſes may be put: Which ſhews, that your having a Juriſdiction, as to what concerns the Publick, does not exclude the Party, but he may have an Action for his private Injury.

A great many Poſitions I have heard, which I take not to be true; particularly this, "That "there is no Remedy at Law, but in Caſes "provided for by the Statutes:" That is not ſo; theſe Statutes imply the contrary: The firſt ſays, Whereas there was not a ſufficient Remedy, therefore that gives a more compleat Remedy; and ſo the Judges declared in the Caſe of *Barnardiſton* and *Soame*.

Sir, They have told us of the Caſes of *Barnardiſton* and *Soame*, and of *Nevil* and *Strode*; with humble Submiſſion to you, thoſe Caſes go ſo far as to prove the Juriſdiction of the Lords, and the inferior Courts: That of *Barnardiſton* and *Soame*, was an Action tried before the Court of *King's-Bench*, and a Set of as learned Judges as ever were, before or ſince, and three of them were of Opinion for the Action, and my Lord Chief Juſtice *Hale* was one of them; who, the Term before he ſurrendered his Character, did thus expreſs himſelf, *He gave Thanks to God, that he had ſpared him to that Time; that he was able to keep his Cuſhion, and declare his Conſcience in that Place.* But afterwards it had it's Fate, a Writ of Error was brought in the *Exchequer*-Chamber; Mr. Juſtice *Levinz*, that reports it, ſays, It appears, that thoſe who argued againſt the Judgment in the *King's-Bench* were made Judges; and they themſelves afterwards determined the Caſe: And every Body knows how valuable it was at that Time to know the Price of an Houſe of Commons, and an *Engliſh* Parliament. Three Judges were then made in the *Exchequer*, and I think, two in the *Common-Pleas*. Afterwards it came into the Houſe of Lords, and there the Reverſal in the *Exchequer* was affirmed, for Reaſons different to what are urged now, and I believe for ſeveral good Reaſons. The Sheriff in that Caſe had made a double Return, and the Sheriff might do it for his own Indemnity, for it was no more than finding a Special Verdict; and therefore the Saying *falſo & malitioſe*, being put to a Thing that was in it ſelf right, it would not alter the Nature of the Thing. Another Reaſon they went upon, was, They ſaid this double Return was a void Return, and for that Reaſon the Action did not lie; and upon theſe Reaſons depended that Judgment. That Gentleman, who ſaid that only four or five Lords diſſented, is under a great Miſtake: Four or five Lords only, I believe entered this Diſſent; but there was a great Number, and near an Equality againſt that Judgment, that did not enter their Diſſent.

Then, Sir, there is the Caſe of *Nevil* and *Strode*; and that was firſt a Judgment in the *Common-Pleas*, and when it had taken it's Progreſs in *Weſtminſter-hall*, it came before the Houſe of Lords; and the Lords returned it back again to *Weſtminſter-hall*, and ordered all the Judges of *England* to deliver their Opinion in it. That was founded upon an Ordinance of thoſe Times; *Berkſhire* was to ſend five Knights, and *Nevill* was one of them that were elected, but not returned: There they ſaid, in that Caſe, that Ordinance was entirely new, and that Caſe did not recommend itſelf by the known Laws of the Land; and for that Reaſon they would not give Judgment, for Wages could not be levied for five ſuch Knights: And when afterwards they were to give Judgment, the right Conſtitution had recovered itſelf.

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Now, as to the Lords Right to receive a Writ of Error in this Caſe: You have addreſſed to them, that they would receive a Writ of Error, at a Time when your Privileges were invaded. That was the Caſe of my Lord *Holles*, who, with others, was informed againſt, 5 *Car.* for having ſpoke Words in this Houſe that did affect the Government; and he pleaded to the Juriſdiction of the Court, (Is there any ſuch Thing here! No, they have ſubmitted to it), and the Court over-ruled their Plea to the Juriſdiction, and that Judgment continued in Force (as ſome others, which have been ſince, do now, which it were well if they were reverſed), till this Houſe took Notice of it; and in 1667, they deſired a Conference with the Houſe of Lords, the Chairman was my Lord Chief Juſtice *Vaughan*; and this Houſe there complained how they were grieved by that Judgment: And after repeated Conferences, both Houſes did conſent to this Expedient, That my Lord *Holles*, being the only Survivor, ſhould be deſired to bring a Writ of Error in the Houſe of Lords, and he did ſo; and the Lords in that Caſe did you Juſtice, and reverſed the Judgment.

As to your paſſing this Vote, what it will ſignify I can't tell: What ſignified a Vote you paſſed before, about the Year 80, That the putting the Laws in Execution againſt Proteſtant Diſſenters, was an Injury to the Publick, and a Subverſion of the Government; and that thoſe that put them in Execution, ſhould be looked upon as Enemies to the King and Kingdom? The Conſequence was, That all the Laws againſt Popery were put in Execution againſt the Proteſtants, more than they were before: The Judges in *Weſtminſter-hall* ſaid, This Vote had not paſſed into a Law, and they could not take Notice of it. I hope we ſhall do nothing that will leſſen ourſelves, nor any Thing but what will be effectual, for the Ends of which 'tis propoſed.

The Speech of Mr. Harley *againſt the Action.*

Mr. *Harley*, (Speaker). Sir, I ſhall trouble you but with a few Words, after this long Debate; and rather to underſtand the Terms you are debating on, than to think any Thing I can offer to be of any great Weight. But I take the Queſtion not to be as ſome have repreſented it, but to be ſingly this in general, Whether an Action does lie at Common Law in the Caſe before you?

There is no need to mention the particular Circumſtances of *Aylesbury* Election; for, if that was the ſingle Caſe, you might have taken another Method. I will not inſiſt, That in this very Election a great Number of thoſe

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Inhabitants petitioned this Houſe upon this Point, that their Votes were denied; and, after this Petition had lain in the Houſe for ſome Time, it was withdrawn by their own Conſent. I do not trouble my ſelf whether this particular Man was amongſt them, nor will I trouble you with what may reaſonably be urged from this, but leave that to other Gentlemen.

But I deſire we may underſtand the Terms upon which we are debating: We have had Maxims of the Common Law, and the Rights of Parliament, mentioned. The Common Law is the Common Uſage of the Realm: I take the Laws of Parliament to be the Common Law of the Land, and the Uſage of Parliament to be the Law of Parliament; and the Law of Parliament is to be known by Uſage, as the Common Law is.

Then how ſhall we know whether this belongs to the Common Law? If there be any other Way, I ſhould be glad to be informed; but I think there is no other Way of knowing whether an Action will lie at Common Law, but by Reaſon or Uſage, and Precedents. Now, if by Reaſon, it is to be made out by what neceſſarily attends this Caſe, or ſome other Caſes like it. And pray what do they offer, that lies at Common Law? Do they give you any Precedent? What Reaſon do they offer? I ſuppoſe that which was read laſt is no Precedent in this Caſe, for that was an Action upon the Statute; or that the Courts below take upon them a Legiſlature inſtead of a Judicature, which muſt be, if there be no Rule for them to go by. I take the Queſtion you have read to conſiſt of two Parts; one aſſerting your own Right, the other is Negative, That no other Courts have any Right, but in Caſes particularly directed by the Statute.

I can't think this of Electors and Elected a Privilege: I take it to be a Service, both in the Electors and Elected; and, formerly, it was reckoned an hard Service: I know not how they find it now. 'Tis a Service, I take it, becauſe all who are Electors are liable to pay the Wages; and I take that to be a Burden: And not only from that, but the very Towns that were Boroughs, and elected, when one paid Fifteenths, the other paid Tenths; ſo that I take it to be a Service: And if a Franchiſe, ſee the Conſequence; it will be in the Power of the Crown to create as many Boroughs as they pleaſe.

Then conſider, this Houſe is in Poſſeſſion of this Power, as of Right; and I do not find the Common Law in Poſſeſſion of any ſuch Right. Then, what do they offer, to bring it in, but that there would be ſome Failure of Juſtice? Now I took it, That the Judges are *Jus dicere*, and not *Jus dare*. If any Thing want a Proviſion to be made for it, it muſt be done by the Legiſlative Power; and, if the Electors want it, Proviſion muſt be made for them, that they ſhall have an Action. And thoſe Gentlemen, who think that neceſſary, may bring in a Bill to that Purpoſe, and take the Senſe of the Legiſlature upon it in a regular Way.

The Queſtion before you now is, Whether the Examination, Hearing, and Determination of all Matters relating to Elections, where ſome Statutes have not particularly directed otherwiſe, does not belong to this Houſe? There was a famous Caſe of *Goodwin*; that was a Caſe conteſted by the Crown, and the Crown pretended to ſend out another Writ; and there they ſay, That as to Members of Parliament, their Attendance, &c. they are the ſole Judge. And this they lay before King *James* in the Firſt Year of his Reign, and claim it as their ſole Right; and the King's ſecond Writ was determined to be void.

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But a Gentleman makes an Argument, If one ſhould ſtrike another in the Houſe, what Remedy? Why there is an Act made for that Caſe in *Henry* VI's Time.

I think now the Matter will turn upon this: Say they, 'Tis true, you can try Elections, and who are the Electors; but here is one Thing remains, that is, to give Satisfaction. Have they any Precedent for this? I believe the Precedents are without: They have a Power for what is neceſſary; nothing leſs than a Law can give the other.

Gentlemen ſay, There may be a Difference in Judgment in Courts below, but they are ſubordinate, and there lies an Appeal: But, in this Caſe, all Courts will be co-ordinate with you; and therefore, if that be a Grievance, nay a Solæciſm in Government, prevent it now.

'Tis ſaid, What will your Vote do? That is pretty odd: If they would have an Act of Parliament, your Vote muſt be the Ground of it.

You are Judges of the Whole; but, ſay ſome, You cannot give the pecuniary Satisfaction. Well, ſuppoſe ſo; but you can reſtore all to their Right. But let me ſay this, If you would not ſet up a co-ordinate Power with you in Matters of Elections, and which will be too hard for you at laſt, I hope it will be a Warning to you, to take more Care in the judging of your Elections for the Time to come.

If the Judgment belongs to you, and you are poſſeſſed of it for ſo long a Tract of Time, that no body can offer any Thing againſt it ſince *Henry* IV's Time; till Gentlemen ſhew me ſome Reaſon, why the Common Law ſhould lay hold of it, I muſt be of Opinion, that it does belong to you; and no Court can take Cognizance of it but you, except where 'tis otherwiſe provided for by Statute.

The Speech of Mr. Cowper for the Action

Mr. *Cowper* (afterwards Earl *Cowper*). I perfectly agree with that honourable and learned Gentleman that ſpoke laſt but one in this Debate, in what he laid down as an undoubted Maxim, or Ground-Work, for the Opinion he delivered, That the Law and Cuſtom of Parliament is Part of the Law of the Land, and as ſuch, ought to be taken Notice of by all Perſons: And I think 'tis the exact Standard by which we ought to walk; and the Deduction my poor Judgment is apt to make from that Principle, is this, That we ought not, out of Zeal to our own Juriſdiction, to go one Step farther than that known Law and Cuſtom of Parliament will warrant us to do.

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Now, I take it upon this Debate, That this Law and Cuſtom of Parliament doth not give the Subject, who is injured by his Vote being denied him, any Satisfaction or Recompence for that Damage; and am the rather confirmed in that Opinion, becauſe that very learned and honourable Gentleman, who is particularly knowing in the Laws and Precedents of Parliament, has not pleaſed to repreſent to you any one Precedent, where the Subject ſo injured hath complained to the Parliament, and had Redreſs in that Particular; but all Petitions have been either from the Candidates, or Electors, complaining of an undue Return: So that it cannot be ſhewed, That it hath been the Law and Cuſtom of Parliament, to give that Remedy or Relief in Parliament, which is the Subject Matter or End of the Action now in Queſtion.

I go likewiſe along with him, and every Gentleman that hath ſpoke it in this Debate, That by the Law and Cuſtom of Parliament, none but your ſelves can determine, who are rightly elected, in order to diſplace or place them here; and incident to that End, you have the ſole Right of conſidering the Right of the Electors, I ſay ſo far forth, as it is neceſſarily incident to determine who ſhall, and who ſhall not ſit here; and no other Court can conſider the Right of the Electors, in order to determine the right of any to ſit in this Place, further than you by ſome Act of Parliament have given them Leave. But this Matter having been now diſputed a great while, you have had it fully repreſented to you, how they came to hold the Scales in this Action in *Weſtminſter-Hall*, not as in a Caſe where the Right of Election, or the Privileges of this Houſe was the Subject Matter of the Queſtion; the Queſtion was brought there only to intitle the injured Subject to Damages: And this Matter ought to be conſidered, as it relates to different Ends and Purpoſes, and upon that it turned in the Caſe of *Soame* and *Barnardiſton*. They who thought that Action lay, thought the Courts below might try the Merits of the Election to repair in Damages, not to determine who ſhould be admitted to ſit in Parliament.

And I will venture to ſay, That the Judgment of the Houſe of Lords, that confirmed that Reverſal, was in no wiſe at that Time ſatisfactory to the Commons of *England*.

But the Act of Parliament that hath been mentioned, was built upon this, That the Reverſal of the Judgment between *Barnardiſton* and *Soame* was not right; and ſo that Act was procured to ſet up the Right of the Commons of *England*, that was thought to be invaded by that Reverſal, or Judgment, that the Action upon the Caſe did not lie.

I will go a Step farther, That as you have the ſole Power to try the Election, and conſider the Right of the Electors, to the End I mentioned, to determine who ſhall be admitted here; ſo I grant it hath been the Law and Cuſtom of Parliaments (how antient I will not enquire) to puniſh the Offenders, particularly the Officers and Magiſtrates preſiding at the Election, for doing any Wrong or Injury in their Office on that Occaſion, in order to make him an Example, as an Offender againſt the Publick, and the Conſtitution of Parliament: So far I grant you have juſt Right to go, and no Body ought to interfere with you.

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But now we are carrying the Matter yet further: The Queſtion now is not, Whether we have the ſole Right to puniſh the Officer as a publick Offender? This Action is not brought to that End, nor is there a Word in the Declaration, who was, or who was not duly elected, or that the Conſtitution or Privilege of Parliament was violated: But the Plaintiff only ſays, he had a Right to vote, and that he was injuriouſly denied it (whether the right or wrong Member was returned, he meddles not with it), and he ſubmits it to the Court and the Law, Whether he ought not to have Damages for that Wrong? And the Queſtion now is, Whether that Demand of Damages was not well founded? Or, Whether there is any Thing in this, contrary to the Law and Conſtitution of Parliament? Law depending on Cuſtom, certainly conſiſts not in, and is not to be made out by one Act, but by often reiterated Acts; and that muſt be very far from being the Law and Cuſtom of Parliament, which is ſo far from being a frequent Repetition of Acts, or Precedents, that in this Caſe, there is not one Inſtance where an Elector hath brought his Petition without Regard to the Return made, and deſired his particular Right to vote might be tried and aſſerted, he having been obſtructed and injured in giving his Vote; nor was ever ſuch Elector repaired in Damages here, nor even had his particular Right to vote reſolved, or aſſerted by any Judgment or Declaration of this Houſe.

The learned and honourable Perſon, upon whoſe Reaſoning I am humbly offering my Thoughts with great Deference, was pleaſed to inſtance in the Caſe of five Perſons in the Town of *Aylesbury*, who exhibited a Petition, and complained of an Injury done them at an Election for that Town, at which their Votes were refuſed: And, if they complained of nothing further, and did not conclude to the Right of the Return, and complain, That they were unduly repreſented, I admit it had been ſo far an Inſtance to his Purpoſe. But if they had ſo complained only of the Injury done the Petitioners in denying their Votes, yet he is pleaſed to tell you, this Petition was withdrawn, and by the Conſent of the Perſons who preſented it, and ſo came to nothing. I ſuppoſe this is the ſingle Precedent to prove the Law and Cuſtom of Parliament, becauſe there is no other Inſtance given. It does not appear upon what Ground or Reaſons it was withdrawn; and I have no particular Memory of that Paſſage; you will pardon me if I am miſtaken in my Conjecture. I believe no Man, that ſeeks a Remedy, would deſiſt, if he expected to ſucceed: So I take the moſt probable Reaſon (till another appear) to be, that they were hopeleſs of doing any Good with it: And one Petition, not proſecuted, will hardly ſhew that Parliaments uſe to give Redreſs in ſuch Caſes. Now, if that Precedent had been ſucceſsful, if the Petition had been

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been referred to a Committee, if Damages had been given upon the Complaint, and a declarative Vote had paſſed to aſſert the Petitioners Right (but I did not obſerve there were any ſuch Proceedings); then, indeed, I muſt admit that it was one Precedent in Point, and a very material one; and it would have proved, That we had once held Plea of this Matter; and, by Conſequence, if we had often done ſo, that no Body elſe had to do with it. But, if that Precedent be defective, and none can ſhew that ever any Petition was exhibited by any Elector for a Perſonal Injury done him in rejecting his Vote, though the Perſon he would have voted for was returned, this Action may lie for ſuch an Injury done to an Elector, without interfereing with any Law, or Uſage of Parliament, that hath yet been made evident: And that brings me to another Matter of that honourable Perſon's Diſcourſe; and I acknowledge he entered into it with a great deal of Candour and Fairneſs.

He was pleaſed to ſay, He thought it was admitted in this Debate, That the like Action is not to be found in all the Reports, or Books of Law. I would allow his Objection its due Weight, and admit what I take his Meaning to be, That this Action, in the particular Species of it, may be new, though it's old in its Genus, or the principal Materials on which it is built: And I take it, if by the general Rule or Reaſon of Law for ſuch an Action it be warranted, this Action (as a thouſand other Actions on the Caſe may) will lie, though in all the Parts 'tis not to be exactly parallel'd; for it is the very Nature of, and implied in the Name of an Action upon the Caſe, that every Man may maintain it on his particular Caſe, provided it carry in it the general Reaſon, or Ingredients required by Law to ſupport ſuch an Action, though in many Circumſtances it may be perfectly new. I ſee that honourable Perſon underſtands clearly the neceſſary Incidents of that Action; that is, there are to be *damnum & injuria*, which I take to mean a Damage to the Subject not ariſing from a lawful, but, which is the Conſequence, of an unlawful Act. Now, ſays he, firſt here is no Damage, becauſe anciently the Attendance was thought a Service and a Burden, and the Right of Electing was a Service too; and, in being deprived of a Service, there can be no Damage; and therefore one of the main Ingredients of an Action of the Caſe is wanting. This is clear Reaſoning, and either to be anſwered or ſubmitted to.

It is ſaid, The Right of Electing was a Service; how true, I doubt upon the Reaſon of the Thing: A Service was often a Part of the Tenure by which a Man held his Land till it came up to the Crown; and the Service was originally created by Grant and Reſervation. Now, can any one imagine, that, where one holds a ſmall Freehold, any ſuch Tenure was created between him and his immediate Lord originally by Reſervation, as that he ſhould vote to ſend Members to Parliament?

But if it might be conſidered as a Service ſo created, it will not do the Buſineſs of the Argument, unleſs you conſider it alſo as a Service, without Advantage or Privilege; for, if it be a Privilege too (though in its Creation it might be a Service), then the depriving a Man of it is an Injury. Now no body can think but that the Right to elect a Parliament-Man, which is a diſtinguiſhing Character from the Vulgar, and hath its Weight in the Legiſlature, is a Privilege; and therefore, to be deprived of it, is to be deprived not only of a Service and Burden, but of a very valuable Privilege: And, I believe, any *Engliſhman* would think we dealt hardly by him to deprive him of it, though we ſhould tell him, at the ſame Time, we deprived him only of a Service or Burden, and not of a Valuable Privilege.

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There is another Thing occurs on this Head: We have been ſo far from thinking the being elected a Service or Burden only, that, in the Nature of a Repeal of thoſe Judgments of *Soame* and *Barnardiſton*, by a poſitive Law, we have given the Elected double Damages, if he be deprived of that Service. Therefore, by our own Notion, and in our own Caſe, 'tis a Privilege that ought to be recompenced even with double Damages, that is to ſay, when it concerns our ſelves: And ſhall we declare it a mere Service in the Caſe of our Electors, not to be recompenced even by ſingle Damages, and that after the undoubted Methods of the Common Law have adjudged it their Due? For I do not find any body doubts, whether this Man has proceeded in the legal Method throughout, even in the laſt Reſort. The Lords have not judged the Fact; they are bound, as to the Fact, by the Verdict, and they are unqueſtionably the Judges of the Law on a Writ of Error: And therefore, as to what hath been ſaid, That any Fact of an Election might come to be determined before the Lords, it is a great Miſtake; for they judge purely of the Law on Writs of Error, as every one knows, that knows any thing of our Conſtitution. Give me Leave to ſay, We, upon this Occaſion, judge of this Matter only as a Matter of Law, which may affect our Privileges; and though we have Authority to conſider what is Law, as it relates to, or may intrench upon, our Privileges, no body that ſits here can think that there lies an Appeal in this Place, or a ſecond Conſideration of this Matter after the Lords Judgment, as 'tis a Point of Law only, and as it regards the Right of the Subject. So that an Objection in Point of Law here, to the Judgment of the Lords, will not hold otherwiſe, than as it relates to our own Privileges; for no body will ſay, That we are the *Dernier Reſort* in any other Reſpect. And tho' that is the only Point that brings it properly under our Conſideration, yet I fear we are taking from the Subject, in Effect, what the Law hath adjudged his Right, and reverſing a legal Judgment given in the Subjects Favour. There are other Arguments flung in, to make up the Weight only, as that which compares the preſent to the Caſe of a Dove-houſe: In which Caſe, in Regard of the Multitude of Actions that would follow, an Action will not lie for every one that is injured by the erecting of it: It is true, where a Multitude is injured

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jured by one and the ſame Fact, it ſhall not be puniſhed by a Multitude of Actions; but the Publick is to take Care of it, becauſe the Injury is of a publick Nature. But by the ſame Standard and known Laws of *England*, if one Man is ſo raſh as to commit a Multitude of Injuries, which ſeverally affect ſeveral Perſons, it was never ſaid, that he became unpuniſhable by the Multitude of his Offences; but every one injured, has his Action againſt him. I have heard it ſaid, *defendit numerus*, but that is ſpoken to the Number of Offenders, not the Number of the Offences commited by the ſame Man: And theſe Injuries, which conſiſt in the denying the Subject to vote when of Right he ought, will not be multiplied (as is objected) by letting the Subject know, that as they may come into Parliament to puniſh the Officer as a publick Offender againſt the Conſtitution; ſo the particular Perſon injured, by being denied his Vote, may alſo have an Action for the private and particular Injury done to him only.

I would mention one Thing more: They who have ſpoke for the other Opinion, ſeem to take it for granted, (which I do not take to be a true Way of reaſoning) that, becauſe in determining who have a Right to ſit here, we do incidently, and only can, in order to that End, determine who have a Right to vote, therefore no other Judicature can try the ſame Matter or Right to vote, though it be to different Ends and Purpoſes.

Now, if you will conſider the different Juriſdictions in the Conſtitution of this Kingdom, there is nothing more common; and many Inſtances may be given of it. There are Variety of Juriſdictions that try the ſame Fact, and yet each hath a ſole and ſeparate Juriſdiction in that Matter, to different Ends; and theſe Juriſdictions are not in that Reſpect ſubordinate to one another: Take the Spiritual and Temporal, the Spiritual is not ſubordinate, but only reſtrainable by the Temporal, where they intrench upon the Temporal; as in the common Inſtance of Matrimony, which directly, and abſtracted from other Purpoſes, is triable in the Spiritual Court, and no where elſe: But yet, if that comes to be a Queſtion of Fact, in Relation to a Title at Law, or to make out a Deſcent, why the Temporal Courts every Day try it, though *per ſe*, and taken by itſelf, it belongs to the Juriſdiction of the Spiritual Court; and yet theſe Courts are not in that Reſpect ſubordinate one to another.

So in the Caſe touched upon of a Battery, 'tis not triable in the Common-Pleas, as it is an Offence againſt the publick Peace, by Indictment, in order to a Fine, but triable in thoſe Courts only, that have a Criminal Juriſdiction; but as 'tis a private Injury, and in order to recompence the injured in Damages, that is triable in the Court of Common-Pleas, and other Places, which have Cognizance of Civil Actions only: And this is not in Reſpect that one Court is ſubordinate to the other, but only holds Plea of the ſame Fact, in order to one End; and the other, in order to another End; and there is no claſhing of Juriſdictions in ſuch Caſes.

For what hath been objected, That this may create Variety of Judgments concerning the ſame Right: This does weigh, it ſeems, in our own Caſes, for we may bring our Actions for double Damages, for a falſe Return, and yet that may produce the ſame Variety of Judgments. So was the Opinion of the Houſe in the Caſe by me cited; and the Law is plain, That though the laſt Determination of this Houſe, where there hath been any, ſhall determine the Right of Election, and there the Judges and Jury ſhall be bound by the laſt Determination, and to act by the ſame Rule; yet in Towns where there has been no Diſpute of the Right ſettled here, one way or other, the Candidate may, notwithſtanding, bring his Action, and he, or the People of the Place, may alſo petition the Houſe of Commons: And then, there is the ſame Objection; for there may be Variety of Judgments touching the Right of Election, one in the Houſe of Commons, and another in the Courts below. And upon the Trial, in order to obtain Damages, a Jury, in ſuch Caſes, where the Right had never been ſettled in Parliament before the Election in Queſtion, are not directed by the Judgment of your Houſe on the ſame diſputed Election; nor is any Jury bound to follow ſuch Judgment. And if you will go upon a Suppoſition that a Judge and Jury may go contrary to Law and Right, or the Determinations of this Houſe in the Caſe before you, 'tis an Objection which you have over-looked in your own Caſes; and therefore, why ſhould it be an Objection to hinder the Perſon, whom you repreſent, of his Remedy for the Injury done him?

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Upon the whole, I am for ſo much of your Queſtion as ſerves only to declare, That you have the ſole Power of determining the Right of all Elections, and even the Electors Right to vote, to the End to try who is your Member, or to puniſh the Officer, as an Offender againſt the Conſtitution: ſo far is agreeable to the conſtant Law and Practice of Parliament. But for that Part of the Queſtion which relates to the reſtraining the Electors from bringing their Actions for the Perſonal or Private Damage done to them, I think it is not agreeable to the Law or Conſtitution of Parliament.

The Speech of Sir Humphry Mackworth, *againſt the Action.*

Sir *Humphry Mackworth.* Mr. *Freeman*, we are much obliged to the Gentlemen that have argued on both Sides, who have brought the Matter of this Debate into a narrow Compaſs: The Queſtion is this, "Whether an "Elector be entitled to an Action at Com-"mon Law againſt the Officer, for Recovery "of Damages, in Caſe his Vote, which he "offered, be not taken down in Writing, "and entered on the Poll? Or, Whether the "Houſe of Commons have the ſole Privilege "of examining and determining the Right "or Qualification of every Elector to give his "Vote, and to judge of the Behaviour of "every Sheriff, and other Officer, in taking "the Poll on the Election of Members to "ſerve in Parliament?

I am of Opinion, with great Submiſſion to better Judgments, that the Houſe Commons have a ſole Right of Judicature in theſe

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Caſes, and that the Elector is not entitled to an Action at Common Law. I ſhall endeavour to ſupport this Opinion, by anſwering the Arguments that have been made uſe of to prove the contrary: And firſt, I crave leave to obſerve, That the Gentlemen who have argued on the other Side, have not taken Notice of a Diſtinction, which ſeems to be very material in this Caſe; and that is, between an actual Force or Violence done by the Officer, and a bare Omiſſion in Point of Duty. It is agreed, That in caſe the Officer does, by Force or Violence, obſtruct or hinder an Elector from offering or pronouncing his Vote at an Election, for which of the Candidates he pleaſes, the Elector will be entituled to an Action at Common Law, for Recovery of Damages; for that is a Perſonal Wrong, and does not concern the Right or Qualification of an Elector to vote in Elections: But in caſe the Officer does permit the Elector quietly to offer, or pronounce his Vote, (as he did in the Caſe of *Aſhby*, who pronounced his Vote for Sir *Thomas Lee*, and *Simon Mayne*, Eſq;) but does not think fit to enter his Vote upon the Poll, the Elector in this Caſe, is not entitled to an Action at Common Law for Recovery of Damages; becauſe he hath neither ſuffered any Force or Violence, nor is by ſuch Omiſſion deprived of his Vote: For a Vote being once pronounced, the Law takes it for the Benefit of the Publick, though the Officer be wanting in his Duty; and none have Power to determine, whether the Elector had a legal Vote, and whether the Officer had ſufficient Reaſon to refuſe to enter the ſaid Vote on the Poll, but the Houſe of Commons: If any others ſhould have Authority in this Caſe, they will be able to deſtroy the Freedom of Elections, and the Conſtitution of Parliament.

It is inſiſted by ſome Gentlemen, That the Electors have no proper Remedy in this Caſe in the Houſe of Commons; and therefore they muſt have the Remedy at Common Law: But with great Deference to their Judgments, the Electors have a very proper Remedy in this Houſe in every Reſpect; for here their Votes will be allowed, the legal Repreſentatives reſtored, and the Officer will be puniſhed for any wilful Default in the Execution of his Office: This is the Remedy that anſwers the End for which every Elector is entitled to give his Vote, which is not for a private Advantage to himſelf, but for the general Advantage of the whole Kingdom: But the Action at Law is no proper Remedy in any Reſpect; for ſince a Vote that is offered and refuſed, is as good by the Law of Parliament as a Vote that is offered and received, and is ſo adjudged on the Trial of every Election in the Houſe of Commons, or elſe they could not fill their Houſe with legal Repreſentatives; it is not proper or reaſonable, that an Officer ſhould pay Damages to an Elector that has not ſuffered any, nor that a publick Offence ſhould be puniſhed by a private Satisfaction; which is not likely to prevent the Evil, preſerve the Vote, and reſtore the Repreſentative; nor is the ſame conſiſtent with the Conſtitution, or the publick Safety.

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The Qualification of Electors, and the Behaviour of Officers in all Elections, are Matters of Parliament, and ſuch Matters are not cognizable elſewhere, as hath been often declared by all the Judges of *England*: A Parliamentary Caſe requires a Parliamentary Remedy; and ſince Votes have been refuſed in all Elections, if Electors in this Caſe had been entitled to an Action at Law, it muſt be preſumed, that ſome time or other, ſuch an Action would have been brought, which yet was never once attempted in any former Reign; and all thoſe Acts of Parliament that were made to give Damages, in Caſes relating to Elections, do demonſtrate that no ſuch Damages could be recovered at Common Law; for if they could, there had been no Occaſion for making any of thoſe Statutes.

It is inſiſted, That every Right muſt have a Remedy; but then the Subject muſt firſt be deprived of that Right, which in this Caſe he was not; and even when he is, he muſt have his Remedy in a proper Manner, and in a proper Court. There are ſeveral Sorts of Rights, and ſeveral Sorts of Laws in *England*, and there are ſeveral Courts of Juſtice, for the Adminiſtration of thoſe Laws: A Man that has a Right to a Legacy, can't bring an Action at Common Law, but he has a proper Remedy in the Spiritual Court. The like may be obſerved of Caſes that belong to the Courts of *Chancery*, *Admiralty*, *Stanneries*, and of the Forreſt Laws. The Subject cannot bring Actions at Common Law, in Caſes that belong to the Juriſdiction of other Courts: And when my Lord Chief Juſtice *Coke* enumerates the ſeveral Laws in this Kingdom, he gives the Precedence to the Law and Cuſtom of Parliament, which, he tells us, is ſuperior to the Common Law in *Weſtminſter-Hall:* And as every Court at Law has it's Cuſtoms and Privileges peculiar to it ſelf, and is ſole Judge of them; ſo alſo the High Court of Parliament *ſuis propriis legibus & conſuetudinibus ſubſiſtit*, hath it's own proper Laws and Cuſtoms, and is ſole Judge thereof. And if an Action at Common Law will not lie for a Legacy, where the Spiritual Court has a Juriſdiction, though the Temporal Courts have, in many Reſpects, a ſuperior Authority; ſuch an Action will much leſs lie in a Caſe concerning the Parliament, which is the higheſt Court of the Kingdom, and who are ſole Judges in all Caſes relating to themſelves. But ſome carry this further, and ſay, that every Right muſt have a Remedy with Damages: This may be true in moſt Caſes, where a Man is deprived of Rights of Property and Poſſeſſion; but there are many Inſtances to be given, where a Right of Franchiſe or Privilege is not entitled to any Damage; as a Perſon elected Mayor of a Corporation, if the proper Officer refuſes to ſwear him, has no Action at Law for Damages, but his Remedy is by a *Mandamus* out of the *Queen's-Bench:* There is a Remedy by *Quare impedit*, but not to recover Damages. In a Writ of Right, you ſhall recover the Land, but no Damages: So in this Caſe, the proper Remedy is to have the Vote allowed, which can only be done by the Houſe of Commons. Some Gentlemen have

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have found out a new Diſtinction, which I never heard before, That the Houſe of Commons have the ſole Privilege to judge of the Rights of Electors, and of the Behaviour of Officers, to one Intent, but not to another; that is, in order to determine who are the legal Repreſentatives, but not to give Damages to the Party injured. But, with great Submiſſion, there is no Weight at all in this Diſtinction; for as it is plain, that the Elector is not, in this Caſe, deprived of his Vote, and therefore ſuffers no Damage; ſo it is alſo evident, that the Judgment of the Houſe of Commons, in Matters properly cognizable before them, cannot be contradicted by any other Judicature; and therefore their Judgment of the Qualification of the Elector, and of the Behaviour of the Officer, muſt be concluſive to all Intents and Purpoſes whatſoever. It is contrary to the Reaſon of all Laws, that the Behaviour of an Officer ſhould be ſubject to the Determination of two independent Juriſdictions; or that he ſhould be innocent by the Judgment of a ſuperior Court, and guilty by the Judgment of an inferior; or that he ſhould be twice puniſhed for the ſame Offence. No Man can ſerve two Maſters: The Officer at this Rate, will be every way enſnared, and made liable to Puniſhment, whether he does his Duty or not: If he accepts illegal Votes on the Poll, he will forfeit 500 *l.* by the Statute, for a falſe Return; if he refuſes them, he may be ruined by a Multitude of Actions; for if one may bring an Action, then 500 may, ſince every Man at this Rate, may offer a Vote, and bring an Action for not entering it upon the Poll. How is this conſiſtent with the Freedom of Elections, in which there ought to be no Terror, neither on the Electors, nor on the Officers? But as the Electors ſhould be free to offer their Votes, ſo the Officers ſhould be free to judge, whether they ought to be entered on the Poll or not; and they ought not to be accountable to any but the Houſe of Commons, whoſe Servants they are in all Matters relating to Elections, and who are entruſted with the Determination of all Matters and Caſes relating thereto; and they may as well puniſh them for taking illegal Votes on the Poll, as for not taking thoſe that are legal: In neither of which Caſes have the Judges of the Common Law any Juriſdiction, though there is the ſame Reaſon in both, to take Care that every the meaneſt Subject may have Relief for any Injury done him; but we are not to take more Care of the meaneſt Subject, than of the whole Houſe of Commons. The greateſt Subject in *England* ought to have no Relief, but what is conſiſtent with the Law of Parliament, and the Safety of the Conſtitution. If an Action lies, and upon a Judgment on that Action a Writ of Error lies in the Houſe of Peers, the Lords will be the ſole Judges at laſt, who have Votes to chuſe a Houſe of Commons; which is directly contrary to the fundamental Maxim of the Law and Cuſtom of Parliament, that the two Houſes are mutual Checks to each other, and ſole Judges of their own Privileges.

This is an excellent Conſtitution, and admirably well contrived for the common Safety: But how can this Conſtitution be preſerved, if the Lords can puniſh our Officers, and govern our Elections? This will be the Way to deſtroy all Checks, and to make the Houſe of Commons dependent on the Lords; and then I cannot ſee upon what Foundation you can be ſaid to ſit here to do any Service for your Country.

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Others inſiſt, That this is a Right that is incident to the Freehold and Freedom of Electors; therefore, as their Freeholds are cognizable at Common Law, ſo is every Incident belonging to it. This Argument is plauſible at firſt Sight, but, in Reality, there is nothing in it: For though the Commons of *England* have ſubmitted their private Differences to Arbitrators, or Judges, indifferently choſen and appointed by the Prince, the common Parent of the People, yet they have never ſubmitted their fundamental Rights and Privileges which they hold in their publick and politick Capacities, as a free Branch of the High Court of Parliament, to any other but their own Repreſentatives, who are choſen and appointed by themſelves. This is not a Caſe, properly ſpeaking, between Party and Party, but between the Lords and Commons; becauſe the Determination of this Caſe brings the whole Right in Queſtion, Who have a Privilege to judge of the Qualification of Electors to give their Votes in Election of Members to ſerve in Parliament, Whether the Lords or the Commons? It is not now the Queſtion, Who hath the beſt Right to Freehold, or Freedom, or to any thing that is incident to it? But, Whether the Commons of *England* ſhall have any Freeholds, or Freedoms at all? Or, which is the ſame thing in Effect, Whether they ſhall have any Security for thoſe Rights or not? For, if the Lords are Judges of your Privileges, you can hold no Right but during their Pleaſure.

The Lords ſeem to contend for the Right of the Subject; but I wiſh it is not for a Power to enable themſelves to judge and determine, as they think fit, of all our Rights, and Liberties: For this is the neceſſary Conſequence of allowing an Elector to have a Remedy in any other Place but within theſe Walls.

This is my humble Opinion; and, if I am miſtaken, other Gentlemen will ſet me right. This is certainly a Matter of the higheſt Importance to the Welfare of the Subject, and I doubt not but they will very well conſider it, before they give Way to the eſtabliſhing a Precedent that tends to deſtroy the Privileges of this Houſe, or the Liberties of their Country.

A great Tenderneſs is expreſſed for this poor Man, whoſe Vote has been refuſed; but whether he had a Right to give his Vote, is very much queſtioned, and never yet determined by this Houſe, who has the proper Judicature thereof. But admtting he had a Vote, Whether ought to be preferred, a private Intereſt, or the Publick Safety? Whether will be moſt for the Honour of this Houſe and the Intereſt of our Electors, The Care of

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a private Perſon by a new-invented Action, neither warranted by Reaſon or Precedent, or any eſtabliſhed Law; or the Care of the Parliament, and the Conſtitution, on which depend the Rights and Liberties of all the Commons of *England*.

Sir, I beg Pardon for taking up ſo much of your Time, but I muſt confeſs it ſeems to me, That our ALL depends upon a right Determination of this Matter; for I cannot ſee any other Reaſon why this new Device is ſupported by the Lords, but only to render you precarious and uſeleſs.

The Speech of Mr. King, againſt the Action.

Mr. *King* (afterwards Lord *King*, and Lord Chancellor.) That which calls me up in the firſt Place is, what that Honourable Gentleman, juſt againſt me, was pleaſed to intimate, as if the Right of Electing was only a Service, and not a Liberty, or Privilege; and I find a worthy Member, that ſpoke laſt, is of the ſame Opinion. Truly, I am loth to tell you my own, without deſiring the Act 25. *Car.* II. *cap.* 9. may be read.-----

Members. No, no.

Mr. *King*. 'Tis an Act to enable the County Palatine of *Durham* to ſend Members to Parliament, and it recites, That they had not, before that Time, had the Liberty and Privilege of electing and ſending any Members to Parliament: Where you ſee the Legiſlature call it a Liberty and Privilege; and, if the Legiſlature call it ſo, I think I may venture to call it ſo too. And if it be a Liberty and Privilege, then the Queſtion will be Whether it does not ſtand on the ſame Bottom with our Liberties and Privileges? In caſe of any other Franchiſe or Liberty, an Action lies at Common Law for the Breach thereof; and why an Action ſhould not lie at Common Law for the Breach of this Franchiſe, as well as for the Breach of every other Franchiſe, is to me very ſtrange. Gentlemen take it for granted, this is purely an Action at Common Law, and no Statute hath any Influence on it. Now there is a Statute which hath not been mentioned (only I muſt premiſe that which, I think, no Body will deny, *viz.* That wherever an Act of Parliament does forbid any Thing, if any Body be injured by the doing of the Thing ſo prohibited by that Act, in Conſequence of Law, the Perſon injured hath an Action;) I ſay, There is a Statute that forbids Diſturbances and Hindrances in Matters of Elections; and, by Conſequence of Law, that Statute gives an Action to the Party injured, againſt the Perſon diſturbing or hindering him in his Election. The Statute I mean, is 3 *Edw.* I. *cap* 5. that is a poſitive Law, whereby all Diſturbances in Elections are forbid: Every Man is forbid to hinder or diſturb by Force or Arms, by Malice, or menacing any Man, to make a free Election.

I ſhall only inſtance in one parallel Caſe, though I could in many more: The Statute in *Richard* II's Time, *de ſcandalis Magnatum*, only forbids the ſpeaking Evil of great Men: There is not one word of an Action; yet, by Operation of Law, it was always held, that an Action would lie upon that Statute for a Scandal of a great Man, becauſe it was prohibited by that Statute. So here, the Statute forbids the diſturbing of any Man by Force or Malice to make free Election; the Jury have found, that the Defendants did, in this Cauſe, maliciouſly diſturb and hinder the Plaintiff from voting at the Election; and by a like Conſequence and Operation of Law, this Action is maintainable.

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Gentlemen ſay, This is a new Action, never heard of before: It is true, this particular Action was never brought before; but Actions of the ſame Kind and Nature, and grounded on the ſame Principles and Reaſons of Law, have been brought before. *Et ubi eadem eſt ratio, idem jus.* I could give you many Inſtances of this Kind. Was it ever heard, till the 20th or 21ſt of *Car.* II. that an Action lay againſt an Officer for denying a Poll to one that ſtood Candidate for a Bridge-Maſter? The Mayor denied the Poll, and ſaid, He was judge of the Election. And upon this, the Perſon injured brought his Action and recovered. At the ſame Time it was ſaid There was no ſuch Action ever heard of before; 'tis true, not that Species, but the Genus was heard of. Another Action was brought 30 *Car.* II. (which was never heard of before) againſt a Mayor, for refuſing the Plaintiff's Vote for a ſucceeding Mayor.

I believe every body knows, that all the Law-books for 400 Years ſay, That the Reverſioner had Liberty to go into an Eſtate of a Tenant for Life, to ſee if he commit Waſte. And no Action was brought till 10 *Jac.* I. by a Reverſioner againſt a Tenant for Life, for refuſing to let him in to ſee whether Waſte was committed. No Action was ever brought againſt a Maſter of a Ship for the negligent keeping and Loſs of Goods on board his Ship, till about 24 *Car* II. and yet the Action lay.

There was another Action, in K. *Charles* I's Time, brought, for a falſe and malicious Proſecution of an Indictment of a Man for Treaſon. There was the ſame Objection; and it was ſaid, That this would deter People from proſecuting. And no body ever dreamt of it before, 'tis true, but it ſtood upon the general Reaſon of the Law; if you do me a Wrong, I muſt have a Remedy. And as to what a worthy Gentleman has ſaid, That there are Inſtances at Common Law, where a Man ſhall recover, and yet have no Damages; 'tis true in real Actions; but let him give me an Inſtance of that in an Action of the Caſe. He recovers nothing there: If he does not recover Damages in real Actions, he recovers the Land itſelf.

Members. The Queſtion, the Queſtion.

Mr. *King*. I find Gentlemen are very uneaſy, I will trouble you no further.

Members. Go on, go on.

Mr. *King*. I agree the determining the Right of Election belongs to the Houſe of Commons; and they ought to apply to the Houſe of Commons in that Caſe. And I ſhall not depart from that; I think I can't, without ruining the Conſtitution: But that which I ſay is, That this Action does not at all relate to the Right of Election. This Action is brought by a Man that hath an undoubted Right of voting, againſt an Officer for maliciouſly refuſing

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fuſing his Vote. Put the Caſe this had happened in a County (for the Law would have been the ſame), that a Freeholder, who had a Right to vote, had tendered his Vote to the Sheriff; and though he knew he was a Freeholder, yet the Sheriff ſhould maliciouſly refuſe his Vote: Hath the Sheriff done this Man an Injury or not? This Man does not bring his Action becauſe the Perſon he would have voted for is not returned, but 'tis becauſe there is an Injury done to his Franchiſe. If I thought the Right of Election was concerned in this Caſe, I would go as far as any, for I think that does belong to the Houſe; but I don't think this is concerned in the preſent Caſe.

Mr. Walpole's Speech, againſt the Action.

Mr. *Walpole* (afterwards Sir *Robert*, and Chancellor of the *Exchequer*). I will trouble you very little at this Time: I think the Point of Learning and Law hath been ſo well ſpoken to by thoſe learned Gentlemen that have been againſt the Queſtion, that, if I was able, I ſhould ſay nothing more to that. But I think the Queſtion, as it is going to be put, is not right; for, as the Queſtion ſtands, though I can't give my Negative to one Part, I think 'tis impoſſible to give my Affirmative to the other. The Matter before you comes to this ſingle Queſtion, Whether you will encourage and give a Power to an Officer, be he whom he will, to act arbitrarily, or rather chuſe, in ſuch a Caſe, to do ſomething in Favour of the Electors? I am ſure, if I deſire to be elected by thoſe that had the Right, I would never give the Officer an Authority to the Prejudice of the Electors. Where you come to ſay, That the ſole judging of the Qualification of the Electors belongs to the Houſe of Commons only, thoſe, I apprehend, are Words of too large Extent and ill Conſequence. Suppoſe there was an Action brought upon the laſt Act of Parliament for a falſe or double Return.------

Mr. *Freeman*. There is an Exception in the Queſtion as to that.

Mr. *Walpole*. I know there is: But ſuppoſe an Action is brought upon that Statute, the Officer may have proceeded with the greateſt Impartiality, may have taken the Poll with the greateſt Exactneſs and Juſtice, and there may appear to be an equal Number of Votes for each Candidate; whereupon he makes a Double Return; and this brings it to be determined by the Committee of Elections, and they vote one of them duly elected. This Gentleman, that had the Favour of the Committee, (though afterwards poſſibly it might be made appear, that, by Bribery or Corruption, and at great Expence, he procured himſelf to be elected) after you have voted him duly elected, he hath nothing to do but to try his Action, and ſee if he can make his double Damages amount to his Expences. The firſt Thing he is to do, is to produce the Vote of the Houſe of Commons that declared him duly elected, contrary, perhaps, to the laſt Determination in Parliament, which in every Place is to be the Guide to the Returning Officer. But ſhall there then be given in Evidence no Qualification of the Electors? Nothing to prove that the Perſons admitted to vote were qualified according to ſuch laſt Determination? Or ſhall that Vote of the Houſe of Commons, that was intended only to bring him into this Houſe, recover him 5 or 600 Damages? I take it to be ſo, as the Law ſtands. Now it ought to be ſeen who hath the greater Number of legal Votes, and whether duly qualified; and, in that Caſe, you muſt ſuffer the Matter again to be tried by the Court; and you do, in ſome Meaſure, make them Judges of the Qualifications of the Electors; if it were otherwiſe, they could not enquire into the Majority of legal Votes.

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What happens in the Caſe of a Mayor, may be in the Caſe of a Sheriff. If a Mayor, or a Conſtable, may deny a Man his Vote, that hath an uncontroverted Right in a Corporation, a Sheriff may refuſe a Freeholder, and ſtrike off enough to make a Majority for whom he pleaſes. You had once the Caſe before you, whether a Sheriff could refuſe a Scrutiny? and one or two Gentlemen would have given that Power to a Sheriff; but a learned Gentleman thought it a dangerous Queſtion, and he deſired to come to the Merits of the Election; and that was determined, and you voted the worthy Member duly elected, and thought it a dangerous Thing to determine, Whether the Officer had that Power one Way or another? I think that Part of the Queſtion, which concerns the Qualification of the Electors, ought to be left out.

The Marquis of *Hartington* ſaid, He thought it was a conſtant Rule, where a Queſtion was complicated, if a Member deſired to have it divided, to divide it; and therefore he ſeconded the Gentlemen who ſpoke laſt, That thoſe Words in the Queſtion, relating to the Qualification of Electors, ſhould be left out.

Whereupon the Queſtion was put, Whether the Words, relating to the Qualification of Electors, ſhould ſtand? And it was carried, That thoſe Words ſhould ſtand Part of the Queſtion. *Ayes* 215, *Noes* 97. And the Commons proceeded to make the reſt of the Reſolutions above-mentioned, *viz. That, according to the known Law and Uſage of Parliament, neither the Qualification of any Elector, or the Right of any Perſon elected, is cognizable or determinable elſewhere than before the Commons*, &c.

There were ſeveral Conferences afterwards between the Lords and Commons, for adjuſting their reſpective Privileges, which broke off at length very abruptly; and as the Commons had addreſſed Her Majeſty, not to grant a Writ of Error, the Lords on the other Hand, drew up an Addreſs and Repreſentation of the Caſe, in which they ſay, Whatever the Commons may inſinuate on this Occaſion, we deſire not to meddle with the Choice of their Repreſentatives: We willingly leave that Matter where it is; and in what manner it is exerciſed there, how impartially and ſteadily, is ſo well known by Experience, and ſo univerſally underſtood, that the People will be extremely deſirous their Eſtates and Properties ſhould be ſubject to ſuch Determinations: It is not ſtrange, the free Conference ended without Succeſs, when the Commons came to

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it with ſuch a Temper, as appears by the Votes of the 8th of *March*, made after they themſelves had conſented to the free Conference: If thoſe Votes had been publiſhed ſoon enough, it would have fully convinced the Lords, how vain a Thing it was to confer with them further upon the Matters in Debate at the former Conferences; for not content with what they had done before, upon Information that their Serjeant had been ſerved with two Writs of *Habeas Corpus*, returnable before the Lord Keeper, in Behalf of Mr. *Montague* and Mr. *Denton*, two of the Gentlemen that had been of Counſel with the five Priſoners, they came to a Reſolution, That no Commoner, committed by them for Breach of Privilege, or Contempt of the Houſe, ought to be by *Habeas Corpus* made to appear before any other Judicature, and required their Serjeant to make no Return, or yield any Obedience to thoſe Writs; and that for ſuch Refuſal, he had the Protection of the Houſe of Commons.

It hath been always held the undoubted Prerogative of the Crown, to have an Account of the Reaſon, why any Subject is deprived of Liberty? and it has ever been allowed, That by the known common Law, it is the Right of every Subject under Reſtraint upon Demand to have his Writ of *Habeas Corpus*, and thereupon to be brought before ſome proper Court, where it may be examined, Whether he be detained for a lawful Cauſe? And the Statutes made in the Reign of Your Royal Grandfather, and Your Royal Uncle have enacted, That in all Caſes, Writs of *Habeas Corpus* be granted and obeyed by the reſpective Officers, upon great Penalties.

But theſe Votes import a direct Repeal of thoſe Laws, as to all Perſons committed by the Houſe of Commons.

It is no longer worth diſputing, Whether a Perſon committed by them, though for a Fact which appears to be both lawful and neceſſary, may be delivered by any Court; for by this new Law, he ſhall never be brought thither; and the Serjeant is not only warranted, but commanded openly to contemn your Majeſty's Royal Writs of *Habeas Corpus*, brought upon the Act of the 31ſt of King *Charles* II. which is an Invaſion of your Prerogative, never before heard of in *England*.

Your Majeſty does not claim an Authority to protect any of your Officers for diſobeying a known Law. The *Habeas Corpus* Act in Times of imminent and viſible Danger, was in the late Reign ſuſpended by Acts of Parliament for ſome ſhort Time, and yet (ſo Sacred was that Law held) that thoſe Acts paſſed with great Reluctancy; and one of the Arguments that prevailed moſt for agreeing to that Temporary Suſpenſion was, That it ſhould be an unanſwerable Evidence to all future Times, that this Act could never be ſuſpended afterwards, by any leſs Authority than that of the whole Legiſlature; But we live to ſee a Houſe of Commons take upon them to ſuſpend this Law by a Vote.

They Ordered, That the Lord Keeper of Your Great Seal, ſhould be acquainted with their Reſolutions, to the End the Writs of *Habeas Corpus* may be ſuperſeded, as contrary to Law, and the Privileges of their Houſe. They are contrary to no Law, but that of theſe Votes, which ſurely are none of the Laws the Lord keeper was ſworn to obſerve; but yet he is to act at his Peril: They have ordered this Law to be publiſhed to him by their Clerk.

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The Lord Keeper is a Commoner, and if he diſobeys, 'tis a Breach of Privilege; and if they ſhould carry it ſo far, as to order him into Cuſtody, he may ſeek, but is not to have, Relief from any *Habeas Corpus*.

We humbly beg Pardon of Your Majeſty, for this long and melancholy Repreſentation, which we could not avoid, without being guilty of Treachery to Your Majeſty, and to our Native Country. The five Perſons immediately concerned, are but poor Men; but we well know Your Majeſty's Juſtice and Compaſſion extends itſelf to the meaneſt of your Subjects.

The Matters in Diſpute are of the higheſt Conſequence: Your Majeſty's Prerogative, the Reverence due to Laws, and the Liberties and Properties of all the People of *England* are concerned and at Stake, if theſe Encroachments prevail.

We do not pretend to ſollicit Your Majeſty to put a Stop to theſe Innovations; Your own Wiſdom will ſuggeſt the moſt proper Methods: We have endeavoured to do our Duty, in laying the whole Matter before You.

We humbly beg Leave ſo far to reſume what has been ſaid, as to preſent Your Majeſty a ſhort View of the unhappy Condition of ſuch of Your Subjects, as have a Right of giving Votes for chooſing Members to ſerve in Parliament, which has been hitherto thought a great and valuable Privilege; but by the late Proceedings of the Houſe of Commons, is likely to be made only a dangerous Snare to them, in caſe they who may be hereafter choſen to ſerve in Parliament, ſhall think fit to purſue the Methods of this preſent Houſe of Commons.

If they refrain from making uſe of their Right in giving their Votes, they are wanting in their Duty to their Country, by not doing their Parts towards the chooſing ſuch Repreſentatives as will uſe their Truſt for the Good of the Kingdom, and not for the Oppreſſion of their Fellow Subjects.

If the Officer, who has the Right of taking the Suffrages, refuſe to admit them to give their Votes, they muſt either ſit down by it, and ſubmit to be wrongfully and maliciouſly deprived of their Rights; or, if they bring their Actions at Law, in order to aſſert their Rights, and recover Damages for the Injury (as all other injured Men may do, in like Caſes) they become liable to indefinite Impriſonment, by incurring the Diſpleaſure of thoſe who are elected.

If being thus impriſoned, they ſeek their Liberty by *Habeas Corpus* (the known Remedy of all other Subjects), they do not only tie their own Chains faſter, but bring all their Friends and Agents, their Sollicitors and Counſel into the ſame Misfortune with themſelves.

If

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If they think themſelves to have received Injury by the Judgment upon the *Habeas Corpus*, and ſeek Relief by Writ of Error (the known Refuge of thoſe who ſuffer by any wrong Judgment) all that aſſiſt them in that Matter, are likewiſe to loſe their Liberties for it, and they themſelves will be removed to new Priſons, in order to avoid the Juſtice of the Law.

We humbly conclude, with acquainting Your Majeſty, That we have been informed by the Petition of two of the Priſoners, that they have been long delayed, though they have made their Applications in due Manner for Writs of Error.

We are under a neceſſary Obligation for the Sake of Juſtice, and aſſerting the Judicature of Parliaments to make this humble Addreſs to Your Majeſty, That no Importunity of the Houſe of Commons, nor any other Conſideration whatſoever may prevail with your Majeſty to ſuffer a Stop to be put to the known Courſe of Juſtice, but that You will be pleaſed to give effectual Orders for the immediate iſſuing of the Writs of Error.

To which Addreſs Her Majeſty anſwered,

" My Lords, I ſhould have granted the " Writ of Error deſired in this Addreſs; but " finding an abſolute Neceſſity of putting an " immediate End to this Seſſion, I am ſenſible " there could have been no further Proceeding upon that Matter.

And the ſame Day the Parliament was prorogued, which prevented Matters being brought to Extremity, and both Parties were in ſome Meaſure obliged; or at leaſt, neither Houſe had Reaſon to cenſure Her Majeſty's Conduct on this Occaſion.

For the five Priſoners obtained their Liberty by the Prorogation, which was one End of their bringing Writs of *Habeas Corpus*, and Writs of Error; and the Commons were ſatisfied, becauſe no Writs of Error were granted.

Nor did the five *Aylesbury* Men think fit to continue or proſecute their Actions againſt the Conſtables afterwards; and ſo the Matter has ſlept ever ſince.

Remarks.

What ſeems to have been inſiſted on by the Commons in theſe Debates, with the greateſt Shew of Reaſon, is, That the Two Houſes of Parliament are independent of each other, and ſole Judges of their own Rights and Privileges; but if the Right of Electors to vote may be determined in the Courts of Law, and from thence ſuch Cauſes removed by Writ of Error into the Houſe of Lords; then the Lords would become Judges of the Right of Electors to chuſe, and conſequently who were duly elected Members of the Commons Houſe; whereby the Commons would loſe their Independency, and become ſubject to the Lords, as to their very Being; for though they allowed the Commons to determine the Right of the Members to ſit in the Houſe; yet if the Lords could, notwithſtanding, upon a Writ of Error, give Damages againſt the Return-Officer, for not allowing the Vote of a Perſon whom they adjudged to have a Right; this muſt neceſſarily have ſuch an Influence upon the Officer, as to induce him to return ſuch Perſons as would be moſt acceptable to their Lordſhips, and conſequently their Lordſhips might in Time chuſe the Houſe of Commons themſelves: And further, ſhould the Houſe of Commons determine the Right of Election to be in one, and the Courts of Law, and their Lordſhips adjudge it to be in another, this would produce contradictory Judgments, and muſt create Confuſion. There is indeed nothing of human Inſtitution, but is liable to ſome Objection, and it was poſſible, the Commons might err in their Determinations: But they thought the Rights and Privileges of the Commons of *England*, much ſafer in the Hands of their own Repreſentatives, than if they were but Tenants at Will to the Houſe of Lords.

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The ſole Queſtion, therefore, in the Debate ſeems to be, Whether, if the Lords ſhould have it in their Power to puniſh the Return-Officer, when he does not allow of ſuch Votes as they approve, This would not make the Lords entirely Maſters of the Election of the Commons, and in Time exclude them from their Share in the Legiſlature? For if it would, every Man's private or particular Right muſt ſubmit to this Conſideration, Better a ſingle Man ſuffer ſome trifling Wrong, than the Conſtitution be deſtroyed. Whatever Laws may countenance Actions on the Caſe, Writs of Error, or other Proceſs, in ordinary Caſes, muſt be waved here, when the Safety of the Whole comes in Competition with ſuch private Rights; and the bringing ſuch Actions would deſtroy the very Being of the Conſtitution.

1703. 2 Annæ.

Proceedings in the Houſes of Lords and Commons in the Caſe of CHARLES BATHURST, Eſq; in *January*, 1703. 2 *Annæ*.

1703. 2 Annæ.

THE Court of *Exchequer*, on the 15th of *July* 1701, made an Order *ex officio*, for the Preſervation of a Record in that Court; and the Lord *Wharton*, finding it was made Uſe of, as Evidence againſt him, in a Trial at the *Queen's-Bench* Bar, of an Iſſue directed out of *Chancery*, wherein the Lord *Wharton* was Plaintiff, and the ſaid *Bathurſt*, *Squire*, and others, were Defendants, concerning ſome Lead-Mines, petitioned the Houſe of Lords, praying the ſaid Order might be diſcharged, and the Record taken off the File, ſuggeſting, that the ſaid Record was forged. *Bathurſt* and *Squire* thereupon petitioned the Houſe of Lords, ſetting forth, That no Suit was depending in the Court of *Exchequer* between his Lordſhip and them; and therefore the Lord *Wharton*'s Petition was not an Appeal (as he called it), but an original Complaint, and therefore ought to be determined by ſome inferior Court: But the Lords proceeding however, to hear and determine the

1703. 2 Annæ.

the Cauſe, Mr. *Bathurſt* complained to the Houſe of Commons; and that Houſe, thereupon, came to the following Reſolution, on the 28th of *January* 1703, *(viz.)*

That the Houſe of Lords taking Cognizance of, and proceeding upon the Petition of *Thomas* Lord *Wharton*, complaining of an Order of the Court of *Exchequer* of the 15th of *July* 1701, for filing the Record of a Survey of the Honour of *Richmond* and Lordſhip of *Middleham* in the County of *York*, is without Precedent, and unwarrantable, and tends to the ſubjecting the Rights and Properties of all the Commons of *England* to an illegal and arbitrary Power.

1703. 2 Annæ.

The Lords, on the other Hand, Reſolved, on the 27th of *March* 1704, That the Houſe of Commons taking upon them, by their Votes, to condemn a Judgment in the Houſe of Lords, upon the Petition of *Thomas* Lord *Wharton*, and to declare what the Law is, in Contradiction to the Proceedings of the Houſe of Lords, is without Precedent, and an Uſurpation of a Judicature, to which they have no Sort of Pretence.

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The Trial of Nathaniel Denew, *&c.*

The Trial of NATHANIEL DENEW, JOHN MERRIAM, and RICHARD BRITTON, Gent. for *An Aſſault and Conſpiracy, and for challenging the Defendant*, William Colepeper, *to fight*, at the *Queen's-Bench* Bar, on the 14th of *February*, 1703-4. 2 & 3 *Annæ*.

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THIS being no State-Trial, and partially related by the Proſecutor himſelf, I ſhall only give a ſhort State of the Caſe, that I may have the more Room for what are properly State-Trials, and publiſhed by Authority.

The Caſe. Mr. *Colepeper* had, in Converſation, reflected on Admiral *Rook*, whereupon the Admiral ſent him a Challenge by the Defendant *Denew*; but *Colepeper* avoided anſwering it as much as he could, under Pretence that he ſhould engage the Admiral with great Diſadvantage; becauſe the Admiral was ſure of a Pardon, in Caſe he wanted it, whereas he was ſure to be hanged if the Admiral fell; and giving *Denew*, who brought the Challenge, ſome ill Language, *Denew* challenged him himſelf; Mr. *Britton* alſo inſulted him, and urged him to fight; and *Denew* meeting Mr. *Colepeper* afterwards near St. *Clement*'s Church in the *Strand*, a Rencounter happened between them; they both drew their Swords, and made ſeveral Paſſes at each other, Mr. *Merriam* being preſent; but People coming in prevented Miſchief.

After which Mr. *Colepeper* indicted the Defendants for an Aſſault and Conſpiracy, and for challenging him; pretending, they deſigned to way-lay and aſſaſſinate him: But the Lords *Winchelſea* and *Thanet* giving them a great Character in Court, and teſtifying they were Men of Eſtates and great Worth, the Jury gave the following Verdict, That

Mr. *Merriam* was *Not guilty.*

Richard Britton Not guilty of the Conſpiracy, or the Aſſault; but guilty of the reſt of the Matter charged in the Indictment.

Nathaniel Denew Not guilty of the Conſpiracy, but guilty of the reſt of the Indictment.

Whereupon Mr. *Denew* was fined 200 Marks, and Mr. *Britton* 100 *l.*

Mr. Colepeper *himſelf was the principal Witneſs againſt theſe Gentlemen; and ſome Ladies, his Relations, ſupported his Teſtimony: The Perſons who took the Trial in Short-Hand were employed by him, and the Trial was publiſhed in the Manner he directed it.*

1702-3. 2 Annæ.

Baillie's Caſe.

Proceedings againſt DAVID BAILLIE, for *Defaming the Duke of* Queensberry *and the Marquis of* Anandale, in *February*, 1702-3. 2 *Annæ*.

1702-3. 2 Annæ.

THE Government of *Scotland* having intercepted a Letter from Mr. *Baillie* to Duke *Hamilton*, wherein he told the Duke, that the Duke of *Queensberry* and the Marquis of *Anandale* would have ſuborned him to ſwear, That Duke *Hamilton*, the Duke of *Athol*, and his Brother the Earl of *Cromarty*, and others were ingaged in a Plot to bring in the Pretender; the Council examined *Baillie* upon Interrogatories, but could get nothing out of him: Whereupon they ordered him to be proſecuted for Leaſing-making, and creating Differences between the Queen and her Subjects, (which was Treaſon in *Scotland* before the Union, but then only a Miſdemeanor.)

Baillie being tried before the Lords of the Council, confeſſed he was the Author of the Letter to Duke *Hamilton*: Whereupon he was ſentenced to ſtand in the Pillory, and to be baniſhed the Kingdom for Life; there being thirty one Members preſent, and not one diſſenting Voice.

But remaining a Priſoner in the *Tolbooth* at *Edinburgh*, when the next Parliament met, they ſet him at Liberty on his Petition; requiring him only to find Bail, to appear before the Parliament when called.

The

1704. 3 Annæ.

Quelch's *Caſe.*

The Trial of JOHN QUELCH, and his Accomplices, for *Piracy, Robbery, and Murder*, at *Boſton* in *New-England*, on the 13th, 16th, and 19th of *June*, 1704. 3 *Annæ*.

1704. 3 Annæ.

THE Articles preferred againſt them, charged, That the Brigantine *Charles* being fitted out as a Privateer at *Boſton*, to cruiſe on the *French* and *Spaniards*, under the Command of Captain *Plowman*, who died ſoon after they ſailed out of the Harbour of *Boſton*, in the Year 1703; the ſaid *John Quelch*, his Lieutenant, and the reſt of the Crew, turned Pirates, and took and plundered ſeveral Ships and Veſſels of the *Portugueſe*, (then in Amity with *Great Britain*) on the Coaſt of *Braſil* in *America*, and murdered the Captain of one of thoſe Ships.

The moſt remarkable Thing in this Trial is, that they were tried upon a Statute made in the 11th and 12th Years of *William* III. which impowers Commiſſioners to try Pirates in the Plantations, according to the Courſe of the Admiralty, and to condemn and execute them without impanelling a Jury; the Sentence being according to the Determination of the Majority of the Commiſſioners.

The Facts being proved beyond Contradiction againſt *Quelch*, and five of his Accomplices who were moſt active in the Captures, they were condemned and executed; but ſome Servants and others, who did not appear to have concurred with them voluntarily, were acquitted.

There being ſeveral Trials for Piracy inſerted already, and this being properly no State-Matter, I chuſe to give only an Abſtract of it, to make Room for what are properly State-Trials.

1704. 3 Annæ.

Lindſay's *Trial.*

The Indictment.

The Trial of DAVID LINDSAY, Gent. for *High-Treaſon*, on the 24th of *April*, 1704. 3 *Annæ*.

1704. 3 Annæ.

THE Indictment reciting, That the Priſoner *David Lindſay*, was a Subject of the late King *William*, and now of her preſent Majeſty, charges him, That after the 11th Day of *December*, 1688, *viz.* on the 26th Day of *March*, 1689, he was in this Kingdom of *England*, *viz.* in the Pariſh of *St. Martin's in the Fields*, in the County of *Middleſex*; and that afterwards, and before the 3d of *December* 1697, *viz.* on the 1ſt of *October*, 1696, he did voluntarily go into *France* without Licenſe, either from the late King *William*, or the late Queen *Mary*; and that, on the 3d Day of *December*, 1697, he was not within the Dominions of the late King *William:* And that, as a falſe Traitor, after the 14th Day of *January*, 1697, *viz.* on the 10th of *December*, in the ſecond Year of her preſent Majeſty, he did traitorouſly return and come into the Kingdom of *England*, *viz.* into the Pariſh of *St. Martin's in the Fields*, in the County of *Middleſex*, without a Licenſe, either from the late King *William*, or from her preſent Majeſty, under the Privy Seal; againſt the Duty of his Allegiance, and againſt the Form of the Statute in that Caſe made and provided.

The Priſoner being arraigned, on the 19th of *April*, deſired he might have Counſel, and thereupon Mr. *Raymond* and Mr. *Williams* were aſſigned to be of his Counſel; and, having pleaded Not Guilty, *Monday*, the 24th of *April*, was appointed for his Trial.

The Priſoner being brought to his Trial accordingly, on the 24th of *April*, a Jury was ſworn, to whom he made no Objections or Challenges.

After which the Priſoner ſaid, He ſhould give the Court as little Trouble as might be; he only begged leave to ſtate his Caſe truly, and ſhould then ſubmit it to their Judgment.

The Lord Chief Juſtice *Holt* told him, If he had a Mind to confeſs, he ſhould have done it before; for now the Jury were to enquire whether he was guilty or not; and directed the Queen's Council to ſtate the Evidence firſt.

Whereupon the Attorney-General ſaid, They charged him with going into *France* without Licenſe, and returning without Licenſe; and if he did not admit thoſe Facts, they would call their Witneſſes to prove them upon him.

Lindſay anſwered, He did confeſs, that being a Native of *Scotland*, and never having had any Office in *England*, he did go into *France* without his Majeſty's Licenſe, and did continue beyond Sea, 'till he was informed her preſent Majeſty, by her Proclamation in 1702, granted a General Pardon to all her Subjects; whereupon he came into *Scotland*, and preſented himſelf to the Government there, and had the Benefit of the Queen's Proclamation allowed him; and he was adviſed, by ſome eminent Counſel there, that he was as free to come into *England* as any other Subject; and, having his Wife and Children here, he came to *London* by Way of *Berwick*; and conceived he was not guilty of Treaſon within the Intent of the Act, deſiring his Counſel might be heard to that Point.

Then the Proclamation was read, containing a general Indemnity for *Scotland*; and Proof was made that the Priſoner was a Native of *Scotland*, and a Proteſtant, and had been allowed the Benefit of the Queen's Pardon there. After which Mr. *Williams*, of Counſel for the Priſoner, ſaid,

The Priſoner's Defence by his Counſel.

My Lord, We do humbly inſiſt, that the Words in the Proclamation do amount to a Licenſe to us to come to *Scotland*; and if ſo, then we are not guilty within this Act of

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Parliament, of coming into the Queen's Dominions without Licenſe. And we likewiſe further inſiſt, That one that has the Queen's Licenſe to come into *Scotland*, may, without any further Licenſe, come into *England*. The Proclamation pardons all Treaſons, and all correſponding and inter-communing with Rebels, or declared Enemies of the Queen, and all other Crimes of what Nature ſoever; and it is declared to be as available as if the particular Crime was named, and as if Remiſſions under the Great Seal were paſſed: And her Majeſty alſo declares, That it ſhall be taken in the moſt favourable and comprehenſive Senſe that may be, for the Security of the Subject. I admit the Words of this Act are, If any return into *England*, or any other of her Majeſty's Dominions, without Licenſe under the Privy Seal, it ſhall be High-Treaſon; now, we humbly hope, if the Queen is pleaſed to beſtow her Licenſe by any Act, or in any Manner equally notorious with her Privy Seal, 'tis ſufficient, and within the Meaning and Equity of the Statute; and this Proclamation, made by all the Heralds at Arms, at the moſt publick Place at *Edinburgh*, is much more notorious and publick than a Licenſe under the Privy Seal only: Beſides, the very Words of the Proclamation are, That it ſhall be, in every Reſpect, as valid and effectual as if it were under the Great Seal; then, ſurely, it muſt be at leaſt as ſtrong as if under the Privy Seal: Beſides, the Statute does not ſay, that the Licenſe muſt be under the Privy Seal of *England*; and it not being ſaid what Privy Seal, or of what Kingdom, it muſt be intended according to the ſubject Matter, the Seal of that Kingdom or Dominion where the Licenſe is granted; and that being *Scotland*, the Licenſe under the Great Seal of *Scotland* is ſufficient; for it ſeems improper that the Seal of one Kingdom ſhould be made uſe of to licenſe an Act in another Kingdom. But it will be ſaid, that, taking this to be a Licenſe, it is only a Licenſe to come into *Scotland*; but the Priſoner is indicted for coming into *England* without Licenſe: Now this Act, with Submiſſion, muſt operate and take its Effect upon the firſt Step made from *France* into any of the Queen's Dominions; ſo that if the Priſoner be guilty of Treaſon within this Act, it muſt be when he made his firſt Step from *France* into *Scotland*; but that being made lawful by the Proclamation, amounting (as we ſay) to a Licenſe, it cannot be afterwards Treaſon for the Priſoner to come into *England*; and this Proclamation amounts to a Pardon of the Treaſon, though it were before the Priſoner returned to any of the Queen's Dominions: For both the going into *France* without Licenſe, and returning home without Licenſe, muſt be joined together to make it Treaſon; ſo that the Priſoner, from the Time he went into *France* without Licenſe, was an Offender, and conſequently capable of a Pardon; and if the original Offence be pardoned, all that enſues upon that Offence is at the ſame Time pardoned. This ſeems to be proved by *Cole*'s Caſe, *Plowd.* 401. where, after one had feloniouſly murdered another, there came a Pardon of all Crimes and Miſdemeanors, and afterwards the Party wounded died. The original Miſdemeanor being pardoned, all that enſued upon it was pardoned; and conſequently the Murder, by the Pardon only of all Miſdemeanors.

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Beſides, I would beg leave to offer to your Conſideration, whether a *Scotchman*, that was not in *England* at the Time of making this Act, be within the Meaning of this Act? The Act ſays, That if any of his Majeſty's Subjects ſhall go into *France* without Licenſe: This, according to a reaſonable Conſtruction, ſhall be intended only of *Engliſh* Subjects, ſtrictly ſpeaking, who were repreſented by the Parliament that made this Law, and who only can reaſonably be ſuppoſed to have Notice of it?

There is another Objection, *(viz.)* That this Indictment, or Trial, cannot be in *Middleſex*; but in the County whither the Priſoner firſt came, after his leaving *France*, which was *Northumberland*. It is a known Rule, That all Indictments, or Trials for Treaſons, and other Crimes, muſt be in the County where the Treaſon, *&c.* was committed: It is true indeed, if I ſteal Goods in one County, and carry them into another, it is Felony, (though not Robbery), in every County whither I carry them: And the Reaſon given in *Dyer* 40, and 7 *Coke* 2, is, That the Robbery or Felony does not alter the Property of the Goods: But this depends upon a different Reaſon, no Way affecting the principal Caſe; for if coming into every County, would make a freſh Treaſon, a Man might be brought to ſuffer as a Traitor, with many Pardons about him.

Mr. *Raymond*, the Priſoner's other Counſel, alſo ſaid, I beg the Liberty to offer a Word or two on the ſame Side, for the Priſoner, and ſhall take Leave to inſiſt upon it, That Mr. *Lindſay* cannot be called one of his late Majeſty's Subjects within this Act: I do agree, he was the late King's Subject, as King of *Scotland*, but not as King of *England*. This Act being made in *England*, by the *Engliſh* Parliament, and uſing the Word Subjects, muſt mean ſuch Subjects as that Parliament were able to oblige, which are only the Subjects of *England*, or the Dominions depending on the Crown of *England*; but not the Subjects of *Scotland*, which is a different Dominion from *England*.

I am very ſenſible, with what Solemnity *Calvin*'s Caſe, in 7 *Rep.* is ſaid by my Lord *Coke* to have been adjudged; but muſt beg leave to conſider the Foundation upon which this Reſolution is built: According to my Lord *Coke* himſelf, in *Calvin*'s Caſe, Legiance is a true and faithful Obedience of the Subject due to the Sovereign; for which the Sovereign is obliged to protect his Subjects: But this is not a blind Obedience to every arbitrary Command of the Sovereign; but is only ſuch an Obedience, as the Law of the Kingdom, or Principality, has reſpectively preſcribed, for the Subject to pay to his Sovereign: Conſequently, the Legiance due to the King, as King of *England*, and the Legiance due to him as King of *Scotland*, (ſince the Laws

of

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of both Nations are diſtinct) muſt be ſeparate and diſtinguiſhable.

And that the Parliament did not intend to concern themſelves with *Scotland*, or the Natives thereof, appears by the Preamble of the Act; The Words are, That upon the Concluſion of the Peace, it was become neceſſary, for the carrying on a Trade between *England* and *France*, that the Subjects of each Kingdom ſhould have, *&c.* Now if a *Scotchman* ſhould be taken to be a Subject of the King of *England*, I conceive he was never taken to be a Subject of the Kingdom of *England*.

But taking it, that Mr. *Lindſay*, though a Native of *Scotland*, might be within both the Words and Meaning of the Act; yet I will ſubmit it to your Lordſhip, whether this Act will bind him, he being beyond Sea, *(viz.)* in *France*, at the Time when it was made. I agree, that every *Scotchman* reſident here, is bound by all the Laws of the Land, and ſo are all Foreigners whatſoever, who live here under the King's Protection: But as ſoon as they are gone out of the Kingdom, their Allegiance, which was but local, ceaſes, and they are no longer obliged by the Laws of *England:* It muſt be agreed, that no *Engliſh* Act of Parliament can bind *Scotland*; nor, as I humbly apprehend, the *Scotch*, while out of *England:* And, if ſo, then how could the Priſoner be bound by this Act, being a *Scotchman*, and out of this Kingdom when the Act was made. Suppoſe it was enacted, That if a *Dane* ſhould land in *England* without Licenſe, he ſhould be a Traitor; and a *Dane*, notwithſtanding, ſhould come into *England* without ſuch Licenſe, ſuch an Act might amount to a Prohibition of his coming, and he might be uſed as an Alien Enemy, 7 *Co.* 6 *B.* as *Perkin Warbeck* was in *Henry* the VIIth's Time; but could not make him a Traitor, becauſe he owed no Allegiance to the Act, or Subjection to the Law, at the Time when the Act was made. As to the Priſoner's having been in *England*, and reſided here, that, I think, will make no Difference, becauſe his Subjection to the *Engliſh* Law ceaſed, as ſoon as he ſtepped off from the *Engliſh* Shore.

I beg leave further to inſiſt, That this Evidence don't maintain the Indictment. The Indictment is for returning from *France* into *England*, and the Evidence is, That he returned out of *France* into *Scotland*, and from thence into *England*. The Act ſays, "That "if any of his Majeſty's Subjects, *&c.* return "into the Kingdom of *England*, or other his "Majeſty's Dominions:" The Meaning of which we take to be, That the firſt coming of any ſuch Perſon into any of his Majeſty's Dominions, ſhall be the Treaſon: And that the Act did not intend to make every ſeveral coming into every diſtinct Dominion, a new Treaſon; for if he has a Licenſe to come into one, it is to be believed, with a great deal of Reaſon, he may be truſted in any other of her Majeſty's Dominions: And if the coming into *Scotland*, was the firſt and only Treaſon puniſhable by this Act, then we muſt offer the general Pardon of *Scotland* in the Priſoner's Excuſe: For though generally ſpeaking, when an *Engliſh* Act mentions the Great Seal or Privy Seal, it muſt be taken to be the Great Seal, or Privy Seal of *England:* Yet in this *Engliſh* Act, if your Lordſhip will conſtrue the Words, *His Majeſty's Subjects*, not only to be his Subjects as King of *England*, but as King of *Scotland*, or any other Nation; by Parity of Reaſon, the Words Privy Seal ought to be extended to all the Privy Seals the King has, as King of *England*, or King of *Scotland:* And, if ſo, then ſince the Queen in her Proclamation, has declared, That her Pardon ſhall be taken as beneficially as if it had been under the Great Seal, (and the Great Seal includes the Privy Seal, and is of greater Efficacy); we humbly hope it will be as beneficial to the Priſoner; nay, rather more, becauſe as to *Scotland*, it pardons the Offence: For though the Return is after the Pardon, yet it pardons the going into *France*, which is the Foundation of the Crime; and without which, the returning into *Scotland*, or any of his Majeſty's Dominions, was no Offence: This is the Uſe the Priſoner would make of this Pardon. I cannot preſs it as a Pardon of an *Engliſh* Crime, though it ſeems ſomething ſtrange, that Mr. *Lindſay* ſhould, by Virtue of this Pardon, be a very good Subject of the Queen's in *Scotland*, and have all the ſame Liberties other of his Countrymen have there, and yet ſhould be a Traitor againſt the Queen here in *England:* That he ſhould be within the Queen's Protection there, and out of her Protection here; and yet at the ſame Time that his Allegiance to her cannot be ſevered (according to my Lord *Coke* in *Calvin*'s Caſe); nor he conſidered as a Subject to her as Queen of *Scotland*, and not as Queen of *England*.

The Reply of the Queen's Counſel to his Defence.

To this Defence, Sir *Thomas Powis*, the Queen's Serjeant replied, It muſt be owned, that a great Deal of that which has been ſaid, might have carried Weight with it, if it had been pleaded in *Scotland*, where the Proclamation was made; but to make uſe of it here in *England*, as having any Force in this Caſe, is not agreeable to Law or Reaſon: For 1ſt it is a Pardon of another Kingdom, for Offences committed againſt the Crown of *Scotland*; whereas this Indictment is for an Offence committed againſt the Crown of *England:* And, 2*dly*, It was granted at a Time precedent to the Time of this Offence committed. As for the Words of the Act not extending to a Native of *Scotland*, we need do no more than read them, to make it appear otherwiſe: It ſays not, Any of the Subjects of the Kingdom of *England*, but if any of his Majeſty's Subjects; ſo that whoever was a Subject of the late King's, is within the Act: And they would do little Service to the Subjects of *Scotland* to overthrow *Calvin*'s Caſe, which was ſo ſolemnly determined near 100 Years ago; which enables them of *Scotland* to come into *England*, and enjoy the ſame Privileges here as the Subjects of *England* do. Certainly, as they are let into all theſe Benefits by the Reſolution of that Caſe, ſo they are, at the ſame Time, the Subjects of the King or Queen of *England:* And ſince the Miſchief of a *Scotchman*'s returning, be equal with that of an *Engliſhman*'s, conſequently, they are not only within the

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the Words, but the Meaning of that Act. It is true, we cannot, by an Act here, bind them in *Scotland*; but we are not now putting in Execution this Act in *Scotland*, but putting it in Execution here in *England*, upon a *Scotchman*, that had been long an Inhabitant here before. As to the Indictment being laid in a wrong Place, if this Objection would hold, it would render it impracticable to profecute any one for this Offence; it being impoſſible to know where a Man firſt privately arrived: But we ſay, wherever he is found in *England*, there the Indictment may be laid againſt him; and the Caſe of the Felony comes Home to this Point: The Man that ſteals Goods in one County, may be indicted in any other County where he carries them. Upon the whole Matter, the Fact being confeſſed, we inſiſt he is within the Words, and the Meaning of the Act, and within the miſchievous Conſequences which are intended to be prevented by it.

Mr. Attorney alſo replied to the Priſoners Counſel, and ſaid, My Lord, we are not to conſider this Gentleman, in this Caſe, as a *Scotchman* abſolutely, but as a *Scotchman* here in *England*. The Queſtion is, Whether an Act of Parliament made in *England* will not bind every Perſon that is reſident here in *England?* Now the Priſoner was reſident here in *England*, and went hence into *France*: And by the Law every *Scotchman*, reſiding in *England*, is an *Engliſhman*, and hath a Right to enjoy the Privileges of an *Engliſhman*. This is the Reſolution in *Calvin*'s Caſe: I will give but one Inſtance of this: The Act of Navigation, made 12 *Car.* II. requires, That the Maſter, and three fourths of the Mariners, ſhall be *Engliſh:* The Act of 14 *Car.* II. *cap.* 11, declares, That any of Her Majeſty's Subjects of *England*, *Ireland*, and the Plantations, ſhall be accounted *Engliſh*, and no others. Now the Natives of *Scotland* inhabiting in *England* or *Ireland*, have always been allowed to be *Engliſh* or *Iriſh*, within that Act; and have enjoyed the Privileges ever ſince, of being Maſters of Ships: So that to all Intents and Purpoſes, a *Scotchman* being in *England*, enjoys the Privileges of an *Engliſhman*, and is a Subject of the Crown of *England*. And as to what they ſay, That his Offence was going into *France*, that is but the Deſcription of the Perſon that falls under the Diſability of the Act; it is his returning from *France* to *England*, that is the Offence; and it is not his returning to *Scotland*, but returning to *England*, or any other of her Majeſty's Dominions, bound by the Acts of Parliament of *England*.

As to that Objection, That this Act cannot bind the *Scots* here, becauſe they have no Repreſentatives in Parliament here; that is not ſo, for they may be, and many of them are, Freemen of Corporations, and Freeholders, and, as ſuch, may be repreſented in Parliament. And as to that Objection, That *Middleſex* is not the firſt County he came into; the Queen may proceed againſt him in any County, as in an Eſcape: It is an Eſcape in every County where the Party comes; and and the Party eſcaping, or the Sheriff, may be proceeded againſt in any County where the Party eſcaped is found, as well as in that from whence he firſt eſcaped; and if this were otherwiſe, the Act could ſcarce ever be put in Execution.

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Mr. *Lindſay* ſtill inſiſting, That the Pardon reinſtated him in all the Privileges he had before; the Chief Juſtice replied, I tell you, No: It only reſtores you to thoſe Privileges you had as a *Scotchman*; but exempts you not from any Puniſhment, to which you were obnoxious by the Laws of *England:* You ought to conſider, that as you are a Subject of *Scotland*, ſo you are a Subject to the Crown of *England*, by being a Native of *Scotland* ſince the Acceſſion of *Scotland* to *England:* And an Act of Parliament in *England*, may ſubject a *Scotchman* to any Penalty, for any Act that he ſhall do in *England*; and the Priſoner being a *Scotchman* born, and having been in *England* for a long Time, and departing from *England* into *France*, within the Time mentioned in the Act, and afterwards returning into *England*, is, to all Purpoſes, within the Letter and Deſign of the Act. Another Point that your Counſel have urged, is, That this Pardon is a Licenſe for you to return into *Scotland*; which, in Truth, it is not; and if it were a Licenſe to return into *Scotland*, it will not be a Licenſe to return into *England*. As to what you ſay of the Offence of going into *France* being pardoned, and therefore the Return cannot be High-Treaſon; to this a plain Anſwer hath been given you, That going into *France* ſince the 11th of *December*, 1688, is no Offence originally; but only the the Return of ſuch Perſon is made High-Treaſon: Therefore ſuch a Pardon, even under the great Seal of *England*, could not have diſcharged him if he had returned afterwards.

If you object, That this Pardon has made you a free *Scotchman*, to all Intents and Purpoſes, as if you had never offended; and conſequently you had the ſame Liberty as any other *Scotchman*, to come to *England:* It is true, this Pardon puts you in the ſame Condition as other *Scotchmen* are by the Law of *Scotland*; but it puts you not in the ſame Condition that other *Scotchmen* are by the Law of *England*.

They who are born in *Scotland*, may inherit Lands in *England*; but if an Alien be naturaliz'd in *Scotland*; though he is, to all Purpoſes, a natural-born Subject of *Scotland* by the Law of that Realm; yet he is not therefore inheritable to Lands in *England*, becauſe he is not a natural-born Subject by the Law of *England*.

The Chief Juſtice then proceeding to direct the Jury, acquainted them, That the Priſoner was a Subject of the Queen of *England:* That it appeared he had departed from *England* ſince the 11th of *December*, 1688, and had returned thither without Licenſe under the Privy Seal; which if they believed, they muſt find him guilty.

The Jury then withdrew; and after a Receſs of half an Hour, brought the Priſoner in GUILTY; and Sentence was pronounced on him as a Traitor; but he was reprived, and afterwards pardoned, as I remember: And, indeed,

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indeed, it would have been very hard, if the Queen had pardoned him as a Subject of *Scotland*, and cauſed him to be executed as a Subject of *England*, admitting he did come within the Letter of the Law.

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The Trial of JOHN TUTCHIN, for *A ſeditious Libel, called*, The Obſervator, at *Guildhall, London*, on the 4th of *November*, 1704. 3 Annæ.

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Tutchin's Trial.

The Information.

THE Information charged, That the Defendant, *John Tutchin*, being a ſeditious Perſon, and a daily Inventer and Publiſher of falſe News and ſeditious Libels, to traduce the Government, did, on the 30th of *May*, in the firſt Year of Her Majeſty's Reign, compoſe and publiſh a certain falſe, malicious, ſeditious, and ſcandalous Libel, entitled, THE OBSERVATOR; wherein, among other Things, were the following Paſſages, No. 11. *Saturday*, the 30th of *May*, 1702. "At the ſame Time we conſider "the *French* King's Succeſs in his Bribery "and Corruption, we ought to lament the "ſad State of our own Country, which af"fords ſo many Inſtances of Treachery. If "we may judge, by our own National Miſ"carriages, perhaps no Nation in *Europe* has "felt the Influences of *French* Gold more "than *England:* And worthy it is our great"eſt Lamentation, that our dear Country "ſhould be weakened by Men of mercenary "Principles, when Countries inferior to us "in Strength and Riches, are ſecured from "Attempts of this Nature, only by the Fi"delity of their People. What is the Rea"ſon that *French* Gold has not affected *Hol"land* as well as *England*; but that their "Miniſtry is ſuch as is entirely in the Inte"reſt of their Country, and altogether in"corruptible? They prefer Men that are "knowing in their Poſts, and are active in "Buſineſs; when in *England* we find Of"fices for Men, not Men for Offices; and "a Title of Honour gives a Man a Title to "a great Employment, he is altogether ig"norant of. By this, and by preferring of "Men by Intereſt and Favour, has the Ex"ciſe, the Cuſtoms, and other Branches of "the Revenue, intolerably ſunk; and, by "this Means, has the Navy of *England*, our "chief Support, been hitherto perfectly be"witched: And can *Lewis* ſpend his Money "better, than in getting Men into Offices "in *England*, who are either falſe or igno"rant of the Buſineſs, or are his Friends?

That on the 11*th of* July *following, he publiſhed another* Obſervator; *wherein are theſe Words*; "And this is a Prerogative of ſin"gular Advantage to the People of *England* "in that their Repreſentatives are the Judges, "of the Male-Adminiſtration of their Go"vernors: That they can call them in Que"ſtion for the ſame, and can appoint ſuch "to wear the Crown who are fitteſt for "Government; which they have often done, "and, indeed, which is the Privilege of all "free People, who are authorized by the "Laws of God and Nature, to chuſe their "own Governors.

That on the 12th *of* June, *in the ſecond Year of the Queen, he publiſhed another; wherein are theſe Words:* "Take one Time with "another, the Miſmanagements of the Na"vy have been a greater Tax on the Mer"chants, than the Duties raiſed by Parlia"ment: We never had a better Navy; but "the Wiſdom of the Managers thereof is like "a bottomleſs Pit, paſt finding out.

That on the 16*th of the ſame* June, *he publiſhed another; wherein are theſe Words:* "What avails it a Man of Learning and "Parts, to qualify himſelf for the Service of "his Country on the Ocean? If he has "Knowledge enough to adviſe *Neptune* him"ſelf; if he has no Intereſt, he ſhall have "no Preferment. How much does it look "to our Nation's Diſadvantage, to have "Men in eminent Stations in the Navy, "who have not ſo much as an Idea, a No"tion, a Thought, of Naval Affairs? To "have Men ſuperintend the building of our "floating Caſtles, who know not the Na"ture of any Part of the Management? To "have Men employed in the Victualling "who qualify themſelves for that Poſt, by "Learning to write their Names; which "is, indeed, a Poſt for a Philoſopher bred to "the Sea?

That the 10*th of* July *following, he publiſhed another* Obſervator; *wherein are theſe Words:* "COUNTRYMAN. Truly Maſter "*Obſervator*, I have no very good News "for you: Mr. *Daniel de Foe* has pleaded "guilty to the Indictment againſt him, for "writing and Publiſhing, *The ſhorteſt Way "with the Diſſenters*; and he is ſentenced to "ſtand three Times in the Pillory, to pay a "Fine of 200 Marks, and to find Security "for his good Behaviour for ſeven Years. "OBSERV. The Court could do no other"wiſe than convict him upon his pleading "guilty: *Habemus confitentem reum* is very "often the Voice of Courts of Judicature; "'tis the Eaſe of Judge and Juries. If *Da"niel de Foe* was in Expectation of *Coleman*'s "Black Box, he has found a Pillory inſtead "of it. *I don't trouble my Head about the "Cuſtom of giving the Pillory to Authors, "which is the Puniſhment of Bakers.* You "talk'd juſt now of turning Author; have "a Care of your Candle; you ſee which is "*the ſhorteſt Way with Authors:* You muſt "all enter yourſelves in the Regiment of Co"lonel *Foe*. The Law of *England* directs, "that no Man ſhall be fined *ultra Tenemen"tum*; and, I make no Queſtion, but the "Juſtice of the Court has fined Mr. *Foe* an"ſwerable to his Eſtate: His Security for his "good Behaviour for ſeven Years, without

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" Doubt, was rationally conſidered, as to " the Legality thereof. For my Part, I " am only acquainted with the Old Laws " of *England*, the antient Birthrights and " Immunities of *Engliſhmen:* This I take to " be the Foundation of New Laws.

That on the 20th of May, 1704, *he publiſhed another ſcandalous and ſeditious Libel; entitled,* The Obſervator; *in which are contained theſe Words.* COUNTRYM. " Maſter *Obſervator*, There is another Plot a- " gainſt you. OBSERV. Prithee Man, there " is a Plot againſt the Queen, and the whole " Nation; is it any Wonder then, that there " are Plots againſt me? The High-Flyers " are now plotting againſt every honeſt Man " in *England:* I'll tell you more of it the " next Time we meet. COUNTRYM. I " fancy ſome Sort of People plot againſt you, " becauſe you endeavour to countermine their " Plots againſt the Queen and Nation. OB- " SERV. You are right enough; but that " ſhan't hinder me from detecting their De- " ſigns, and from opening the People's Eyes. " But prithee, what Plot is this? COUNTRYM. " Why, Sir, it is a Plot preparatory to your " Trial; and, if they can't affect this Plot, " I ſuppoſe you'll never be tried: They in- " ſinuate into the Citizens of *London*, that " you have lately written very ſcandalouſly, " maliciouſly, and treaſonably, and I do not " know how many other Lies, againſt them " the ſaid Citizens; and, by this Means, " they are minded to ſet your Jurors againſt " you. OBSERV. This is likely enough, " they'll leave no Stone unturn'd to ſuppreſs " the Truth: I underſtand I ſhould have been " proſecuted by Bill the laſt Seſſions; but the " High-Flyers did not like the Jury: Nay, " they ſay, they don't like the two Sheriffs, " becauſe they won't pack Juries, to find in- " nocent Men guilty". To the great Scandal of the Queen and her Government, and againſt the Peace, *&c.*

A Challenge to the Favour.

Then the Jury were called over; and the Defendant's Counſel challenged Mr. *Pinfold*, becauſe he had diſapproved of *The Obſervator*, and therefore might be thought prejudiced againſt the Defendant: But the Court held, that they could not challenge to the Favour, in a Caſe of the Crown: However, Mr. *Pinfold* deſiring to be excuſed, the Queen's Counſel conſented he ſhould be ſet aſide; and no other Challenge being made to the reſt of the Panel, a Jury was ſworn: After which Mr. Attorney, in opening the Evidence, ſaid,

The Jury ſworn.

Mr. Attorney opens the Evidence.

My Lord, the Information is laid againſt Mr. *Tutchin* for a few of his *Obſervators* of the many he has writ; ſometimes two, ſometimes three in a Week. It is a great while that he has done it; and it has been the great Indulgence of the Government, that he has not been proſecuted before. He has been taken notice of by the Houſe, and been before the Secretary of State, where he has been admoniſhed to take care of what he ſhould write; but he would not take Warning: And now he is to be tried for ſome of his Papers; wherein it will appear, that he has taken the greateſt Liberty, I believe, that ever Man took. Libels uſed to come out by Stealth, and in the Dark; but theſe have been publiſhed openly, with all the Defiance imaginable. You may ſee how mild the Proſecution hath been, by what he has done ſince the Beginning of it: He has been writing in ſuch a Manner to prepare for the Trial, as, I think, never was done before. A Proſecution of this Nature is of the greateſt Conſequence; and, it may be, I may be blamed, being in the Office wherein I am, that there have not been more ſuch made. Here is the higheſt Reflection on the Government imaginable: There can be no Reflection on them that are in Office under Her Majeſty, but it muſt caſt ſome Reflections on the Queen, who employs them. I believe, there is hardly one, in any conſiderable Poſt under the Government, but has been criminated by him: Nothing eſcapes him. He cenſures all Mankind; writes magiſterially, and defies all Authority, and caſts the vileſt Reflections on the Government; as if we, who are in the Queen's Service, made it our Buſineſs to corrupt Juries; and makes Reflections on Sheriffs and Juries. Theſe are of the greateſt Conſequence in the World to the Government, and to every body: For if ſuch mercenary Writers may have the Liberty to reflect on whom they pleaſe, no Man's Reputation can be ſafe.

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Gentlemen of the Jury, the Matter you are to enquire into, is, Whether the Defendant be the Author or Publiſher of theſe Libels? That is the Matter you are to try: What the Puniſhment muſt be, if you find him guilty, is in the Judgment of the Court. We will produce our Witneſſes, and doubt not, but you will do the Queen Juſtice.

The Evidence of How, *the Printer.*

The Evidence being called, Mr. *How* the Printer was ſworn, and teſtified, That the latter End of *March*, 1702, he treated with Mr. *Tutchin* about writing an *Obſervator*, to be publiſhed weekly: That the firſt was publiſhed in *April*, 1702, and all that had been publiſhed ſince, to that Time, he had from Mr. *Tutchin:* He was to give him half a Guinea for every *Obſervator* at firſt, and afterwards a Guinea; and had printed in all about 266, which he had paid him for.

That *Tutchin* bid him (the Printer) fear nothing; if any Danger happened, he would be a Rogue to himſelf and his Family if he did not diſcover him.

The Queen's Counſel then produced one of the *Obſervators* mentioned in the Information, and demanded of *How*, If he remembered the printing of it? and *How* anſwering, it was printed at his Houſe, the Defendant's Counſel asked, if he kept exactly to his Copy, or took the Liberty of inſerting and leaving out Words? *How* anſwered, ſometimes he had altered them himſelf, when he ſaw a Miſtake, and did not know where to find *Tutchin*; and he was not ſure that Paper was printed without ſome ſuch Alteration.

The Queen's Counſel demanding, If he had not publiſhed them in Volumes, ſince the firſt publiſhing of them? *How* anſwered, *Tutchin* ordered him to bind them up in three Volumes, and he made a Preface and Index to them, which he paid him for; and *Tutchin* ſet his Name to the Preface.

Then

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Then one of the Volumes being produced, the Defendant's Counſel demanded of *How*, Where that Book was delivered to him to be bound up? *How* anſwered, He could not ſay whether it was in *London*, *Middleſex*, or *Surry*.

Then the Priſoner's Counſel inſiſted, That they could not read the Paper produced as *Tutchin*'s Paper; for whatever Papers *How* received from him were in Writing, and they muſt produce that very Writing, or a true Copy of it; and Mr. *How* declared he had often altered the Papers; and that might be made a Libel, by a very ſmall Alteration, that was not ſo before.

The Court demanding of *How*, If he had not the original Papers? he anſwered, Very few of them.

Whereupon Sir *Thomas Powis* obſerved, That thus, if the Author could get the Copy deſtroyed, there could be no Evidence againſt him; for the Printer could never ſay, it agreed with the Copy to a Letter: He thought, however, they had given a fair Evidence that this was the ſame Paper that was brought to *How*, nor had they ſhewn that any thing was added to it, or diminiſhed from it: That the Printer teſtified, the Defendant avowed and juſtified *all* he had printed, ordered him to collect all thoſe Obſervations into Volumes, and owned them afterwards: It was obſerved alſo, that they were printed and publiſhed in *London*; and wherever the Agreement was made between the Author and Printer, they might charge the Defendant where the Papers were printed, purſuant to his Agreement; for this made the Compoſing and Printing his Act, eſpecially after he had made an Index and Preface to the Volume, and ſet his Name to it: This was, no doubt, a Publication and owning of them.

The Defendant's Counſel ſtill inſiſted, That the Papers ought not to be read, if they had not been examined with the written Copies ſent to the Printers: That it was true, every Copy of a Libel was a Libel; but whoſe Libel was it? And demanded of *How*, If *Tutchin* looked over all the Papers in the Book, and owned them? *How* anſwered, *Tutchin* ordered him to deliver them to the Lord *Nottingham*, about a Week after they were publiſhed, which was in *April*, 1703, and he delivered them to his Lordſhip accordingly.

Then two of the *Obſervators* in the Book were ordered to be read, namely, that of the 30th of *May*, 1702, were he ſays, *At the ſame Time we conſider the* French *King's Succeſs, in his Bribery*, &c. (as in the Information); and that of the 11th of *July*, 1702, where he ſays, *And this is a Prerogative of ſingular Advantage*, &c. (which ſee in the Information.)

How being asked who was the Author of theſe two Papers, anſwered, He had ſhewn Mr. *Tutchin* the ſame Numbers, and he had owned them an hundred Times.

Then it was demanded, If he carried all the Original Papers he had to Mr. *Borret?* and he anſwering he did, Mr. *Borret* was ſworn, and depoſed, That *How* brought the Original Paper of the 12th of *June*, 1703, to him, where he ſays, *Take one Time with another*, &c. (as in the Information): Then the Paſſage in *The Obſervator* of the 10th of *July*, 1703, was read, where he ſays, COUNTRYMAN, *Truly Mr.* Obſervator, *I have no very good News for you*, &c.

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Mr. *Borret* alſo produced the Original *Obſervator* of the 20th of *May*, 1704, and teſtified he had it of Mr. *How*, and *How* teſtified he had it from *Tutchin*; wherein he ſays COUNTRYMAN. *Maſter* Obſervator, *there is another Plot againſt you*, (as in the Information).

Here the Defendant's Counſel objected, That It was not yet proved theſe Papers were *written* in *London*, as laid in the Information; obſerving, that at the Biſhops Trial, though the Petition was proved to be under all their Hands, it was required they ſhould make it appear, that the Paper was written in the County of *Middleſex*.

The Queen's Counſel anſwered, they had proved his owning himſelf to be the Author, and his cauſing them to be printed in *London*.

The Court ſaid, that was not an Evidence of his writing them in *London*; and if he was guilty of a Fact in one County, they could not charge it in another; but *if he cauſed it to be printed in* London, *no doubt but that was a Publication there.*

The Queen's Counſel replied, If his owning himſelf to be the Author, and their proving the Copy to be received in *London*, was not Evidence that they were written there, they could hardly ever prove the Charge of Writing; for the Libeller was uſually alone when he wrote the Libel.

The Court demanding of *How*, If *Tutchin* wrote any of his *Obſervators* at his Houſe, in *Grace-church-Street? How* anſwered, None that he knew of.

Tutchin's Defence by his Counſel.

Then Mr. *Montague*, the Defendant's Counſel, made his Obſervations on the Evidence, and ſaid,

I can hardly ſay I am of Counſel for Mr. *Tutchin*, becauſe I have never ſeen him, but upon recording his Appearance in open Court; and he has not thought fit to ſend us any Inſtructions till this Morning: But, I ſuppoſe, this Remiſsneſs in his Temper proceeds from his Innocency of the Accuſation againſt him; and he has a Mind to let the World ſee how eaſy it is to make his Defence, ſince he has pitched upon me for his Advocate, and given me ſo little Time to prepare myſelf for it. But, as ſhort Notice as I have had of this Information againſt him, thus much I will beg leave to ſay of it in general; That it does by no Means come up to what the Gentlemen on the other Side call it, *A Charge of Writing and Publiſhing a falſe and ſcandalous Libel.* My Lord *Coke* has given us a Definition, or rather a Deſcription of a Libel: Says he, *Famoſus Libellus, ſeu in famatoria ſcriptura, is made either againſt a private Man, or a Magiſtrate: If it be a private Man it does deſerve to be puniſhed; becauſe it is likely to incite all the Family or Kindred of ſuch a Perſon to revenge the Injury, which tends to the Breach of the public Peace. If it be againſt a public Perſon, as a Magiſtrate, it is a greater Offence; becauſe it concerns not only the Breach of the Peace,*

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Peace, but it is a Scandal to the Government: And it matters not whether ſuch private Man, or Magiſtrate, be dead or alive at the making of ſuch Libel, becauſe the Friends and Relations of ſuch Perſons are incited thereby to diſturb the Peace of the Kingdom. By all which Sayings of my Lord *Coke*, I do humbly ſuppoſe, that there can be no Libel, where no Perſon certain is reflected upon, or ſcandalized. A Libel that points at no body in particular, is like a Shot at Random, that ſeldom does any Miſchief: And therefore I do take it, with great Submiſſion, that in this Caſe Mr. Attorney ſhould have ſhewed us what Perſon (either publick or private) theſe *Obſervators* have aſperſed. My Lord *Coke*, in another Place, does liken Libelling to Poiſon, which ſecretly deſtroys a Man's Reputation, as the other does his Life: But certainly it would be thought a ſtrange Sort of Indictment, to charge a Man with being guilty of Murder, and not mention ſome one in particular, that has loſt his Life through the Defendant's Means or Procurement. Now, pray my Lord, how much does this Information differ from ſuch an Indictment? Here it is ſaid, that the Defendant has wrote and publiſhed a falſe and ſcandalous Libel, of and concerning this Kingdom of *England*, and the Officers and Miniſters of the Queen; but a National Reflection, that equally concerns every individual Perſon in the Kingdom with the Reflector himſelf, cannot excite and ſtir up the People to quarrel one with the other: And to tell me the Miniſters and Officers of the Queen are particularly concerned, does but give me Occaſion to ask, what Officers and Miniſters Mr. Attorney is taking care of? For I do not find any Miniſter of State, or other great Officer, ſo much as mentioned throughout this Record. A Bailiff or Conſtable is one of the Queen's Officers; and yet very few will think a Man ought to be puniſhed for Scandal, that ſhall ſay of ſuch Officers and Miniſters, they commit frequent Miſdemeanors, and are of mercenary Principles. Would it not have been eaſy for Mr. Attorney to have aſſigned the Particulars, if he knows of any Body that has been defamed by theſe *Obſervators*? But ſince the Information ſets forth no Particulars, I hope the Jury will take it for granted, that nothing in theſe Papers can be affixed to any Man's Door; but whatever has been writ is ſpent in the Air; and I hope this Accuſation will vaniſh there likewiſe.

In the next Place, my Lord, I would beg leave to take Notice of the particular Papers, which have been ſeverally read in Evidence. And the firſt that has been produced, is one of the printed *Obſervators*, agreed on all Hands to have been publiſhed ſo long ago as the 30th of *May*, which was in the firſt Year of Her preſent Majeſty's Reign: And as to this, the Charge is, That the Defendant has written, compoſed, and publiſhed it; but how many of theſe three Particulars have been made out, muſt be obſerved: And as to the writing of it, Mr. *How* has ſworn, that there was an Agreement made betwixt him and the Defendant, (but where he cannot ſay) that Mr. *Tutchin* ſhould write a Paper, ſometimes once, ſometimes twice a Week, of the Publick Tranſactions; and ſuch a Paper has been writ by Mr. *Tutchin*; but where this Paper was wrote by Mr. *Tutchin*, or delivered, Mr. *How* cannot ſwear. However, ſo far he goes, that from theſe Papers of Mr. *Tutchin* he has printed, at his Houſe in *London*, theſe Papers that are now produced: But on this Evidence I muſt, with your Lordſhip's Favour, obſerve, That there are two different Sorts of Libels ſpoken of: The one is in writing, ſuppoſed to be written by Mr. *Tutchin*, but God knows where: The other in Print, owned by Mr. *How*, to be printed and publiſhed from the written Paper; which does not appear, and of which no true Copy has been proved. Now we hope, therefore, my Lord, that the Gentlemen of the Jury will rightly diſtinguiſh betwixt this firſt and ſecond Libel, and make a Difference betwixt the Act of Mr. *How* and that of Mr. *Tutchin*. The printed Papers here produced, are ſtiled *The Obſervator*; ſo were not the written ones, if Mr. *How* be to be believed: The printed *Obſervators* are ſold about for the ſole Benefit of Mr. *How*, and Mr. *Tutchin* receives only a ſmall *Præmium* for the writing once or twice in a Week. Mr. *Tutchin* only earns his weekly Subſiſtence, by making Obſervations in the Country; and it does not appear that he concerns himſelf further about the Printing or Publiſhing of them: If he gets his Money, Mr. *How* may do with his Papers as he thinks fit. So that I muſt humbly inſiſt upon it, that what Mr. *How* has done within this City of *London*, can never reach Mr. *Tutchin* into *Surry* or *Eſſex*. It has been ſaid, indeed, and I ſhall not contradict it, That the bare tranſcribing of a Libel will make a Man guilty of libelling: But for this Reaſon I do ſay, that Mr. *How* only has been guilty of making and publiſhing theſe printed *Obſervators* in *London*; and Mr. *Tutchin*, if he be guilty, muſt be convicted of the making and publiſhing that which can be ſworn to be his written Obſervations; eſpecially ſince it has plainly appeared, that the Papers written by Mr. *Tutchin* have been frequently altered by Mr. *How*, before they were printed off.

And if we conſider the Paſſages that have been produced, the Gentlemen of the Jury will perceive, a very little Alteration will make theſe Papers quite different from what they are: However, as they be, I hope there is no great Matter in any of them. The firſt *Obſervator* ſays, *At the ſame Time, if we conſider the* French *King's Succeſs, in his Bribery and Corruption, we ought to lament the ſad State of our Country, which affords ſo many Inſtances of Treachery*, &c. Now, pray who is *We* in this Caſe? Says Mr. Attorney, in his Innuendo, the People of *England*; but I hope an Innuendo ſhall not make a Man guilty of a Crime which otherwiſe cannot be affixed upon him. But ſuppoſing this ſame Paper were in Truth written with Relation to *England*; will any one ſay, that (no Times whatſoever) this Country has afforded any Inſtances of Treachery? And what Part of this Information does ſo much as fix the Time to which *The Obſervator* alludes? If all that is here ſet forth were written of a former Miniſtry, I do ſuppoſe there would not be

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be ſo much Blame laid on the Author, as if he comes nearer the preſent Times: So the Time to which theſe Papers do refer, muſt certainly be material, and fit to be conſidered of, before any one can rightly judge of this Caſe; and for want of its being aſcertained and determined whither theſe Reflections may extend, I hope the Jury will not very much regard them.

The next Charge does ſet forth a wicked Aſſertion to have been made, *de & concernen' poteſtat. Populi Anglicani.* But we muſt be in your Lordſhip's Judgment, whether the Paper that is produced does make out the Aſſertion to be juſt as it's laid: I take it with Submiſſion, that there is a manifeſt Variance betwixt the Charge and the Libel. The Charge makes him ſpeak of the Power of the People at large; when the Paper comes to be read, that ſpeaks of our Repreſentatives in Parliament: And ſurely there is a Difference, to ſay, The People at large can do ſo and ſo; and to ſay, Our Repreſentatives in Parliament can do it. For Inſtance; The making of Laws is not in the People diſperſed over *England*; but in their Repreſentatives in Parliament, in Concurrence with the Houſe of Lords, when the Royal Aſſent does likewiſe concur with them; therefore, I think, this Charge cannot affect us, upon Account of this Variance. The next Article then to be taken Notice of, is, that concerning the Navy.----

Mr. Solicitor interrupts him.

Here Mr. Solicitor obſerved, That Mr. *Montague* ſaid nothing of the Prerogative the People have; that their Repreſentatives were Judges of the Mal-Adminiſtration of their Governors; that they can call them in Queſtion for the ſame, *and can appoint ſuch to wear the Crown who are fitteſt for Government; which they have often done:* All this ſcandalous Matter he paſſed by.

Mr. *Montague* anſwered, I did ſo; and I did it on purpoſe, becauſe I looked upon it as a Matter not proper for you and I to talk of, as Advocates, in this Place: And I am apt to think, my Diſcretion, in paſſing it by, will be more eaſily juſtified than theirs that ſhall bring ſuch Points as theſe upon the Stage to be talked on before this Aſſembly. I muſt declare, for my own Part, that I think the Rights of Princes, and the Power of the People, too high Topicks for me to meddle with; let others do as they think beſt. I ſhall paſs over to the next Article, concerning the Navy: *Take one Time with another, the Miſmanagements of the Navy have been a greater Tax on the Merchants, than the Duties raiſed by Parliament:* Now how does this relate only to the Navy Royal; it is no where ſaid, the Miſmanagement of the King's Navy, or the Queen's Navy; and the Word Navy does, in my poor Underſtanding, ſignify no more than a Number of Ships got together, and therefore, I do humbly conceive, there may be a Navy of Merchant Ships, as well as a Navy of Men of War; 'tis altogether uncertain what Navy the Author does allude to.

Here the Chief Juſtice obſerving, That by the Navy muſt be meant the Royal Navy; Mr. *Montague* anſwered, If it muſt, yet no body can ſay we never had any Miſmanagements in the Royal Navy; and whenever that has happened, the Merchants of *England* in all Probability have ſuffered by it.

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Mr. Attorney replied, Such Diſcourſe was not to be allowed; and Mr. Solicitor added, *When a Man complains of the Miſmanagement of the Government; and afterwards ſays, the People have a Power, inherent in them, to call their Governors to Account: What is this? Does it want an Expoſition, thus to poſſeſs the People with an Opinion of the Power they have, to call the King or Queen to an Account? What do ſuch Things tend to, but to raiſe in the People an Indignation againſt the Government?*

Then Mr. *Montague* went on, and ſaid, The Thing I was inſiſting upon, was, that whatever is here ſet forth, is not brought within any Compaſs of Time, and there is no particular Reflection upon any Perſon whatever: Though Mention is made of divers Miſmanagements, and of ſeveral Miſcarriages; yet all thoſe Things may be ſaid of other Times long ſince: And, therefore, ſince this Exception goes to all the reſt of the Charges in the Information, I ſhall paſs by the other Particulars; *and thereupon concluded*; That they had done nothing as to the *Printing* of this Paper; that was done by *How*; they had nothing to do with it. The Chief Juſtice anſwered, It appeared that *Tutchin* delivered them to *How*, in *London*, to be printed; and *How* agreed to give him half a Guinea a Paper at firſt, and afterwards twenty Shillings; and this muſt be with a Deſign to have them printed. Mr. *Montague* replied, *Tutchin* did not care what *How* did with the Papers; he was only to have ſo much Money for them.

Then Mr. Attorney made his Obſervations on the Evidence for the Queen, and ſaid,

Mr. Attorney's Reply to this Defence.

My Lord, They are ſetting up a Doctrine that will make Libelling ſafe, ſo that no Man can ever be puniſhed for it. We have charged the Defendant with writing, compoſing, and publiſhing a Libel; we have proved the Agreement made with the Printer, be it in *London*, or out of *London*, is not very material. Now, if there be an Agreement made out of *London* for printing and publiſhing a Libel, wherever the Libel is printed and publiſhed, he is guilty; for whatever is done by his Agreement, he is guilty of it. As to the next Thing, I am much concerned to hear them ſay, that which I never before heard urged in any Court, That a Libel is not a Libel, unleſs they aſſign ſome particular Perſon: But I look upon it as the higheſt kind of Libels to reflect on publick Officers in general; on the Adminiſtration of Juſtice in general. I believe every one knows a Libel is a Libel, though particular Perſons are not named, if it reflect on Officers in general, as Miniſters of State, or Judges, or the like. Mr. *Montague* would have it, that Reflections on the Miniſters of the Crown is not a Reflection on the Queen; and he would have it, that we ſhould have averred who thoſe Miniſters are, that were meant in the Libels. As to the firſt, certainly they that reflect on the publick Adminiſtration of Juſtice by the Queen's Officers, do reflect on Her Majeſty, who places and continues them in their Offices. And to the ſecond Reflection, being in general

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general on the Miniſtry, we ought not, nor could, aver who, in particular, he meant in theſe Libels: The whole Adminiſtration under the Queen is reflected on, in placing in Officers in general; in the Management of the Navy, and placing in the Officers thereof; and in the Adminiſtration of Juſtice in the Courts of Juſtice; and what can be more ſcandalous? There needs no Averment to explain theſe; in themſelves they appear to be Libels; and I hope ſuch Diſcourſes as have been made on this Occaſion, for the Defendant, will not meet with any Countenance: But I am ſurprized to hear it juſtified here, by a Counſel, *That the People have Power to call their Governors to Account.*

Mr. *Montague* anſwering, He did not ſay ſo; Mr. Attorney replied, Certainly what you did ſay, *(viz.) That you ſhewed more Diſcretion, in paſſing it by, than we did, in queſtioning the Defendant for it; and that we wanted Diſcretion in bringing this Matter on the Stage*; could have no other Meaning, but that the Matter was juſtifiable, but you would not in Prudence do it; which, I muſt ſay, is the greateſt Liberty I have known taken by a Counſel.

The Chief Juſtice ſaid, He did not hear him ſay ſo: And Mr. *Montague* added, I did not ſay ſo; I ſaid it was more diſcreet to paſs it by, than to take Notice of it.

Mr. Attorney replied, I will always proſecute any Man that ſhall aſſert ſuch Doctrine; I think it my Duty, in the Station I am, always to take Notice of ſuch Diſcourſes as theſe, which no Counſel ought to preſume to make.

The Chief Juſtice directs the Jury.

Then the Lord Chief Juſtice *Holt* proceeded to direct the Jury; and ſaid, This is an Information that is preferred by the Queen's Attorney-General againſt Mr. *Tutchin*, for writing, compoſing, and publiſhing, or cauſing to be written, compoſed, and publiſhed, ſeveral Libels againſt the Queen and Her Government, being ſix in Number; and entitled *The Obſervator:* The firſt of which was publiſhed on the 30th of *May*, 1702, Wherein he is charged with defaming the Government; and ſaying, "*That corrupt and ignorant Officers were employed, that were not fit for their Places.*

In the ſecond, with ſaying, That "*This* "*is a Prerogative of ſingular Advantage to the* "*People, That their Repreſentatives are the* "*Judges of the Mal-Adminiſtration of their* "*Governors: That they can call them in Queſtion for the ſame; and can appoint ſuch to* "*wear the Crown who are fitteſt for the Go-*"*vernment; which they have often done; and,* "*indeed, which is the Privilege of all free* "*People, who are authorized by the Laws of* "*God and Nature, to chuſe their own Gover-*"*nors.*"

This, ſays the Chief Juſtice, is to poſſeſs the People, that they may, at their Will and Pleaſure, when they take a Fancy to it, diſſeiſe the Queen, and ſet up what Government they pleaſe. Now, it is moſt plain, that a Contract was made between Mr. *Tutchin* and Mr. *How*, for Mr. *Tutchin* to write and frame, and Mr. *How* to print theſe Papers: And no body can imagine, that Mr. *How*, the Printer, would give him Money for the written Copy, unleſs it was to be printed: Beſides, Mr. *Tutchin* afterwards owned theſe two, and divers others; ordered him to bind them up in a Volume, and wrote a Preface to them, and ſet his Name to it: *So that here is full Proof that theſe were compoſed by Mr.* Tutchin, *in order to be printed; and they were printed afterwards, and he received Money for them.*

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The Chief Juſtice obſerved further, That the other four *Obſervators* in the Information, were of the ſame Nature as theſe two; and then goes on, and ſays, You have heard the Evidence, and are to conſider, whether you are ſatisfied Mr. *Tutchin* is guilty of writing, compoſing, or publiſhing theſe Libels: They ſay, they are innocent Papers, and no Libels; and they ſay, nothing is a Libel, but what reflects upon ſome particular Perſon: But this is a very ſtrange Doctrine, to ſay, it is not a Libel reflecting on the Government, endeavouring to poſſeſs the People, that the Government is mal-adminiſtered, by corrupt Perſons, that are employed in ſuch and ſuch Stations, either in the Navy or Army.

To ſay, that corrupt Officers are appointed to adminiſter Affairs, is certainly a Reflection on the Government. If Men ſhould not be called to Account, for poſſeſſing the People with an ill Opinion of the Government, no Government can ſubſiſt; for it is very neceſſary for every Government, that the People ſhould have a good Opinion of it: And nothing can be worſe to any Government, than to endeavour to procure Animoſities, as to the Management of it: This has been always looked upon as a Crime; and no Government can be ſafe without it be puniſhed.

Now, you are to conſider, whether theſe Paſſages in theſe *Obſervators*, do not tend to beget an ill Opinion of the Adminiſtration of the Government? To tell us, That thoſe that are employed, know nothing of the Matter, and thoſe that do know, are not employed: Men are not adapted to Offices, but Offices to Men, out of a particular Regard to their Intereſt, and not to their Fitneſs for the Places: This is the Purport of theſe Papers.

Now they, on his Behalf, inſiſt on theſe Things: Firſt, They ſay, You do not prove any Crime againſt him in *London:* Indeed, it is not proved, that he wrote them in *London*; but the Queſtion is, if there be not Proof of the compoſing and *Publication in* London? There is Proof that they were ſent to Mr. *How* in order to print them in *London*. Now whether he received them in *London*, or no, (but ſuppoſe out of *London*) yet, if he received them to print them in *London*, that is a Publication in *London*. If they ſcruple that Matter, it ſhall be ſpecially found. If they were delivered to be printed in *London*, I muſt leave it to your Conſideration, whether you will not find him guilty of publiſhing them in *London*. They were ſome of them printed in *Fenchurch-ſtreet*, and others in *Gracechurch-ſtreet:* He knew where the Printer lived, the Contract was made, and he was paid for them. Gentlemen, I muſt leave it to you: If you are ſatisfied that he is guilty of compoſing and publiſhing

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publiſhing theſe Papers at *London*, you are to find him guilty.

Then the Jury withdrew; and after a quarter of an Hour's Receſs, brought the Defendant in GUILTY of compoſing and publiſhing, but not of writing the Libel.

Tutchin convicted.

Mr. *Tutchin* appearing in Court on the 13th of *November*, Mr. Attorney ſaid, Mr. *Tutchin* had given him Notice, that he would bring an Appeal in Arreſt of Judgment; and, indeed, he had given publick Notice of it, for it was put into the News-Papers.

His Counſel move in Arreſt of Judgment,

Mr. *Montague*, the Defendant's Counſel, then moved in Arreſt of Judgment: For that the *Venire facias* was awarded the laſt *Trinity*-Term, returnable, *Die Lunæ prox' poſt tres ſeptimanas ſancti Michaelis*; which was *October* the 23d, the firſt Day of *Michaelmas*-Term; and the *Diſtringas*, which ſhould have iſſued the ſame Day, was ſued out the 24th of *October*, being the Day after the Return of the *Venire*; ſo that there was a Diſcontinuance of the Proceſs.

and aſſign a fatal Error in the Pleadings,

The Queen's Counſel ſaid, They believed this had been done on Purpoſe, and admitted it was an Error; but held, it was amendable; about which the Court were divided. Mr. Juſtice *Gould* and Mr. Juſtice *Powis* were of Opinion, it was amendable; but the Chief Juſtice, and Mr. Juſtice *Powel*, held, it could not be amended: Whereupon Mr. Attorney ſaid, The Court being divided, he knew no Rule to ſtop Judgment: But Mr. Juſtice *Powis* afterwards coming over to the Chief Juſtice and Mr. Juſtice *Powel*, it was agreed there muſt be a new Trial, and the former Trial was quaſhed: But I do do not find the Suit was ever revived, and *Tutchin* continued to write his *Obſervators*, with uncommon Impudence, ſeveral Years afterwards.

which the Court held could not be amended.

The Trial quaſhed.

Tutchin eſcapes.

Remarks on Tutchin's Trial.

Never did ſeditious Libeller meet with better Fortune, or rather better Supporters, than Mr. *Tutchin*, who had arraigned the Adminiſtration of the Government, for Months and Years together, in a Daily Paper, and yet never was puniſhed for it: Nay, he did not only tell the People, that there were Miſmanagements, but that they had a Right to call their Governors to account for them; to diſplace the Miniſters, and even dethrone their Prince, and transfer their Allegiance to whom they pleaſed, when they did not approve the Adminiſtration: For this he had been reproved by the Parliament, and by the Secretaries of State, and admoniſhed to have a Care how he publiſhed ſuch treaſonable Papers: But ſtill he went on, and it was near two Years before he was proſecuted at all for them, and then only charged with a Miſdemeanor, though he was certainly guilty of Treaſon, if conſpiring the Deſtruction of his Sovereign, and inciting the People to depoſe Her, and ſet up another, if ſhe did not alter her Miniſtry, was Treaſon. This was the perpetual Drift of his Papers; which he durſt not have publiſhed, if he had not been, in a Manner, aſſured of Indemnity, from thoſe who put him upon writing them, furniſhed him with Materials, and, probably, were the real Authors of many of them.

For it was about this Time, that the Lords *Marlborough* and *Godolphin* thought fit to forſake their old Friends, and go over to the Whigs: And ſuch was their Influence at Court, that they procured moſt of thoſe that were well affected to the Church and the Monarchy, to be diſplaced, in the Fleet, the Army, and the Civil Government; and introduced ſcarce any in their Room, but thoſe that had ſhewed their Diſaffection to the Conſtitution, both in Church and State; or thoſe who were ready to follow the Example their Leaders ſet them, and betray both: For which Conduct, I could never aſſign any other Cauſe, than the Ambition and Avarice of ſome Noble Peers.

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The Whigs had expreſſed ſuch an Averſion to the Perſon, as well as the Succeſſion of Queen *Anne*, in the laſt Reign, that they were generally laid aſide when ſhe came to the Throne; and, I am confident, deſpaired of ever being employed again, till they ſhould merit the Queen's Favour by their Submiſſion: But a certain Triumvirate of Lords, propoſing to engroſs the Adminiſtration to themſelves, during this Reign, and apprehending the Tories would never go their Lengths, to the Surprize of the Malcontents themſelves, offered to bring them into Play again, on Condition they would implicitly obey their Dictates; which was too advantageous an Offer not to be readily embraced.

Two great Difficulties however ſeemed to ſtand in their Way, and oppoſe their Views; *(viz.)* The Queen's Affection for the Church, and the general Inclinations of the People to the preſent Adminiſtration: But both theſe Difficulties they found Means to ſurmount, or obviate: For the Lords above-mentioned, having the Queen's Ear entirely at this Time, and unſuſpected by her of any Deſigns in Favour of her Enemies, ſhe too eaſily reſigned herſelf to their Advice, conſented to diſplace her beſt Friends, and put thoſe that hated both Her and the Conſtitution, into the moſt conſiderable Poſts: And having proceeded thus far, procured the Parliament to be diſſolved, and another choſen by the Influence of the Treaſury, and the Officers and Magiſtrates they had brought in to ſerve their Deſigns, in every Part of the Kingdom: The Nobility alſo being at mortal Enmity with the laſt Houſe of Commons, did not a little promote the Choice of another Set of Men: And thus, in the Reign of a Queen, the beſt affected to the Church, of any Prince that ever ſat upon the Throne, were the Friends of the Eſtabliſhment oppreſſed, and their Enemies put in a Capacity of riding over their Heads. Towards which Change, *The Obſervator*, *Defoe*, and a numerous Tribe of Libellers, the Tools of the Faction, did not a little contribute; and their Maſters, in Gratitude for the Service they had done, ſkreened them from the Puniſhment they deſerved.

For it is amazing, when *The Obſervator* had plainly threatened, that the People would depoſe her Majeſty; and told her in Print, That they had a Right to do it, if ſhe did not change Hands, that he ſhould eſcape unpuniſhed. As to that Flaw in the Pleadings, of a Diſcontinuance of Proceſs, which brought him off at his Trial; I verily believe, as the Attorney-

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Attorney-General ſaid in Court, That it was done by the Direction of ſome of his Great Friends on purpoſe. However, this could not have ſaved him long; the Proſecution would have been revived, and he would infallibly have been puniſhed, had not his Friends ſoon after come into Play, the Attorney-General, and all his Proſecutors been diſplaced, and he ſecured by the Countenance and Protection of the Miniſters he ſerved.

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The Trial of Captain THOMAS GREEN, and his Crew, for *Piracy*, before the Court of *Admiralty*, in *Scotland*, on the 5th of *March*, 1705. 4 *Annæ*.

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Green's *Trial.*

The Indictment.

THERE were two Indictments preferred againſt them, the one againſt the Captain, by the Name of Captain *Thomas Green*, Commander of the Ship called *The Worceſter*, Captain *John Maddar* chief Mate of the ſaid Ship, *John Reynolds* ſecond Mate, *Thomas Linſteed* Aſſiſtant to the Super-cargoe, *James Burn*, Boatſwain, *James Sympſon* Gunner, *Andrew Robertſon* Gunner's Mate, and *John Bruckley* and *George Kitchen* Seamen: The other Indictment was preferred againſt *Henry Keigle* Carpenter of the ſaid Ship, and *Samuel Urline* his Mate, *George Haines* Steward, *Daniel Stringman* Cook, *Samuel Wilcoks* Surgeon's Mate, and *George Glen*, *Henry Barnes*, *Alexander Taylor*, and *John Bannantine*, Seamen, (Foremaſt-Men) of the ſaid Ship *The Worceſter*, then lying in the Harbour of *Bruntiſland*.

Theſe Indictments were of the ſame Tenour; ſetting forth, That notwithſtanding, by the Law of God, and of this, and all other well-governed Nations, the Crimes of Piracy, Robbery, and Murder, were prohibited under the higheſt Pains; the ſame Captain *Green* and his Crew, had, nevertheleſs, dared to commit the ſame, in the following Manner, *(viz.)* That having ſailed in the ſaid Ship from *England* to the *Eaſt-Indies*, under Pretence of Merchandizing; they did, in the Month of *February*, *March*, *April*, or *May*, in the Year 1703, encounter or meet with a Ship upon the Coaſt of *Malabar*, in the *Eaſt-Indies*, the ſaid Ship carrying a red Flag, and having *Engliſh* or *Scotchmen* on Board; and after having had ſome Diſcourſe with them, did, without any lawful Warrant or juſt Cauſe, attack the ſaid Ship, firſt by their Sloop, which they had manned and furniſhed with Guns and other Arms, for that Purpoſe; and after they had engaged her ſome Time by their Sloop, the Ship *The Worceſter* boarded her; and having overcome the ſaid Ship, ſeized her Men, killed them, and threw them over-Board; and having plundered her afterwards made Sale of the Ship and Goods: For which the Priſoners ought to be puniſhed with the Pains of Death, and Confiſcation of Moveables.

The Evidence of Antonio Ferdinando.

The Witneſſes for the Crown being called, *Antonio Ferdinando*, a Black, the Cook's Mate of the Ship *The Worceſter*, was ſworn, and teſtified, That he entered himſelf at *Callicoiloan* on the Coaſt of *Malabar*, in the Service of Mr. *Loveday*, the Purſer of the Ship *The Worceſter*, about two Years and a half ſince, and was put on Board the Sloop belonging to *The Worceſter:* That about a Month after he came on Board, the ſaid Sloop and the Ship *The Worceſter* attacked another Ship, ſailed by white Men, carrying *Engliſh* Colours, and the Men on Board her ſpeaking *Engliſh:* That before the Fight, Captain *Green*, Mr. *Loveday*, and *Coge Commodo* an *Indian* Merchant, went on Board the ſaid Stranger's Ship, and ſtaid there the Space of a Glaſs, and then returned on Board *The Worceſter:* Immediately after which, the ſaid Sloop was manned with about twenty Men; among whom were Captain *Green*, Mr. *Loveday*, the Super-cargoe, the Gunner, and the Carpenter, and they took with them four great Guns and two Patereroes on Board the ſaid Sloop: That afterwards, Captain *Maddar*, Chief Mate of *The Worceſter*, came on Board the Sloop, and they engaged the Stranger Ship in a running Fight two Days, and the third Day they boarded her with the Sloop, killed the Men in her with their Hatchets, and threw them over-Board: That during the Engagement between the Sloop and the ſaid Stranger Ship, the Ship *The Worceſter* came up, and fired at the Stranger Ship, but did not board her: That there were ten or twelve Men on Board the Ship that was taken, and but few Goods; and what Goods were found in her were carried on Board *The Worceſter:* That he (the Witneſs) was wounded in the Arm in the Fight, *(he ſhewed the Scar in Court;)* and the Captain threatened to kill him, if ever he ſpoke of the Engagement, either to white or black Men: Adding, that the upper Coat he wore at the Trial, was taken on Board the ſaid Stranger Ship, and the ſaid Ship was carried into *Callicoiloan*, and ſold to *Coge Commodo*, who bought her for his Maſter, one of the *Malabar* Kings; and he thought the ſaid Ship might carry about twenty Guns.

That eight of the Priſoners at the Bar; *viz. Haines*, *Bannantine*, *Bruckley*, *Wilcocks*, *Burn*, *Robinſon*, *Glen*, and *Taylor*, were on Board *The Worceſter* during the Engagement, and Captain *Green*, *Maddar*, *Sympſon*, *Keigle*, *Kitchen*, *Linſteed*, and the Witneſs, were on Board the Sloop; and he thought *Reynolds* was then on Shore at *Callicoiloan*, the Engagement being between *Tillichery* and *Callecut*. This Witneſs declared he was born of Chriſtian Parents, and was a Chriſtian himſelf.

May *the Surgeon's Evidence.*

Charles May, Surgeon of the ſaid Ship *The Worceſter*, teſtified, That they ſailed from *England*, and arrived on the Coaſt of *Malabar* in the *Eaſt-Indies*, in *January*, 1703, having thirty-five or thirty-ſix Seamen on Board: And that

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ſet on Shore at the Ibeck (or Port) of *Callicoiloan*; from whence he went up to that Town, being ſome Miles diſtant from the Port: That about a Fortnight after he had been at *Callicoiloan*, he heard firing of Guns as at Sea: That meeting the ſame Day with *Coge Commodo* the Ship's Merchant, and *Franciſco de Olivera*, the Interpreter of *The Worceſter*, who were juſt come from the Ibeck (or Port;) and asking, What that ſhooting meant? They anſwered, *The Worceſter* had an Engagement with another Ship: And that the Witneſs walking on the Shore next Morning, ſaw *The Worceſter* riding in her Birth, (or Station) where ſhe uſed to lie, and another Veſſel riding at her Stern, about four Miles diſtant from the Shore.

That ſeeing the Long-Boat of *The Worceſter* coming on Shore the ſame Morning, he asked the Men the Reaſon of it, (for it was not uſual for Ship's Boats to come over the Bar, becauſe of the Surf, or great ſwelling Sea.) They anſwered, Captain *Madder* ſent them for a *Pinguetta* (or Country-Boat) of freſh Water; for they had ſtaved, and ſpilt all their Water on Board, and there had been Busking all Night: By which he underſtood, they had been hard at Work; ſuppoſing the Ship had been driven from her Anchor, and they had been getting it up again: They alſo told him, they had brought a Ship in with them; but ſaid nothing of a Fight. That the Witneſs going on Board for Medicines for the ſick Men he had on Shore, four or five Days afterwards, and ſeeing the Deck encumbered with Cheſts and Goods, he demanded of Captain *Madder*, What they had got there? Whereupon *Madder* curſed him, and bid him mind his Plaiſter-Box: That he afterwards underſtood, that the Ship which rode at the Stern of *The Worceſter*, was ſold to *Coge Commodo*, the Ship's Merchant at *Keilon* River, and Part of *The Worceſter*'s Crew carried her thither, and left her here; and the Interpreter told him (the Witneſs) That *Coge Commodo* complained, he had bought the Ship too dear: That ſome Time after, *Antonio Ferdinando*, the laſt Witneſs, was ſent on Shore to the Deponent, being wounded in the Arm; and he found it to be a Fracture, and ſuppoſed it to be a Gun-ſhot: That *Antonio* told him, he had been ſet on ſhore at *Cochin*, and a *Dutch* Surgeon ſet his Arm there: That he (the Witneſs) afterwards coming on Board *The Worceſter*, found two more of the Men wounded; and demanding, How they came by their Wounds? *Madder* bid him ask no Queſtions, and would not ſuffer the Men to anſwer any; and ordered this Witneſs to go on Shore again immediately, and he never heard any of the Ship's Crew mention the taking of a Ship afterwards: That *The Worceſter* ſpringing a Leak on the Coaſt of *Malabar*, they carried her to *Bengal* to refit, though it was five or ſix Weeks Sail diſtant from thence; and they might have had her refitted at ſeveral Ports on the Coaſt of *Malabar*: That during theſe Tranſactions, Mr. *Linſteed* and Mr. *Hammond* were left on Shore at *Keilon*, about ſeven Leagues from *Callicoiloan*, to take Care of ſome of their Cargoe.

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Antonio Franciſco's *Evidence.*

Antonio Franciſco, Captain *Green*'s Black, being ſworn, teſtified, That his Miſtreſs he ſerved in *Pegu* cauſed him to be baptized, and he profeſſed himſelf a Chriſtian: That he was taken into the Captain's Service at *Delagoa* in the *Eaſt-Indies*; and while they were upon the Coaſt of *Malabar*, he was chained down to the Deck two Months, in the Forecaſtle of the ſaid Ship, from whence ſix Guns were fired; but he heard no firing from any other Ship: That two Days after, he ſaw ſome Goods brought on Board *The Worceſter*; and asking *Ferdinando*, the other Black, about them, he ſaid, they were brought from on Board a Ship they had taken; and there were ten Men killed on Board the ſaid Ship that was taken; and ſhewed this Witneſs a Wound he received while he was in the Engagement on Board the Sloop; but charged the Witneſs not to mention the Fight to any Man: But that he (the Witneſs) did not ſee any other Men wounded beſides *Ferdinando*.

Wilkie's *Evidence.*

James Wilkie a Taylor in *Edinburgh*, teſtified, that going to *Bruntiſland*, after Captain *Green*'s Ship arrived there, to enquire after his Brother *Andrew Wilkie*, who went with Captain *Drummond* to the *Eaſt-Indies*, he fell into the Company of *George Haines*, one of the Priſoners, at Mrs. *Seatin*'s Houſe; whereupon he (the Witneſs) asked him, If he had not ſeen Captain *Drummond* in that Voyage? And *Haines* anſwered him in a Paſſion, Damn you, what have I to do with Captain *Drummond?* But after they had drank together ſome Time, asking *Haines* again, Whether he had not heard of a *Scotch* Ship in his Paſſage to the *Indies? Haines* replied, That being upon the Coaſt of *Malabar*, where they took in the Black that was then with him, a *Dutch* Ship informed them, that one Captain *Drummond*, who commanded a *Scotch* Ship, was turned Pirate; whereupon they manned their Sloop, and made themſelves ready in caſe they ſhould be atttacked; but they did not ſee the ſaid *Scotch* Ship: That *Haines* alſo acknowledged, when the Ship was ſeized in *Leith* Road, he had that in his Cuſtody, which he would not have had fallen into the Seizer's Hands for twice the Value of the Ship; and that he threw it over-board, ſaying, Let them ſeek it now at the Bottom of the Sea: He added, there was ſtill ſomething in the Ship that would never be found by the Seizers, unleſs they pulled her Board from Board; and he knew very well where it lay: That the Witneſs deſiring Mrs. *Seaton* to enquire further into this Matter, ſhe ſaid, Her Daughter was the propereſt Perſon, for ſhe was *Haines* Sweetheart: And that her Daughter told them next Morning, *Haines* ſaid, he found they had a Deſign to pump him; but they ſhould never be the wiſer for him.

Mackenzie's *Evidence.*

Kenneth Mackenzie, being ſworn, teſtified, That he was in Company with *Wilkie* the former Witneſs, and *Haines*, at Mrs. *Seaton*'s in *Bruntiſland*; and heard *Wilkie* ask *Haines* about Captain *Drummond*'s Ship; at which *Haines* fell in a Paſſion: And that the ſame Night he heard Mrs. *Wilkie* intreat the Widow *Seaton* to get an Account from ſome of Captain *Green*'s Crew of her Son, who went

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Doctor on Board Captain *Drummond*'s Ship: And the next Morning, he heard *Ann Seaton*, her Daughter, ſay, That *Haines* told her, they had a Mind to pump him; but what he had ſaid, he had ſaid: And that ſhe asking him, why he fell in a Paſſion on the mentioning Captain *Drummond?* He anſwered, He knew more of Captain *Drummond* than he would tell.

Wood's *Evidence.*

William Wood teſtified, That being in Company with one *Henderſon*, and the Priſoner *Haines*, at *Bruntiſland*, and *Haines* appearing melancholy, *Henderſon* demanded the Reaſon of it; and *Haines* anſwered, *It is a Wonder, ſince we did not ſink at Sea, that God does not make the Ground open and ſwallow us up, now we are come on Shore, for the Wickedneſs that has been committed during the laſt Voyage, on Board that old Bitch* Beſs, (pointing to the Ship *Worceſter*); and this Witneſs telling *Haines*, that Captain *Madder*'s Uncle was boiled in Oil, for attempting to burn the *Dutch* Ships at *Amſterdam*; *Haines* replied, If what *Madder* had done the laſt Voyage were as well known, he deſerved as much as his Uncle had met with.

This Teſtimony of Wood *was confirmed by* Henderſon, *who was preſent during that Converſation.*

Seaton's *Evidence.*

Anne Seaton, the Daughter, alſo teſtified, That ſhe heard *Haines* uſe thoſe Expreſſions, *It is a Wonder, ſince we did not ſink at Sea, that God does not make the Ground open and ſwallow us up*, &c. And that *Haines* ſaid, he knew more of Captain *Drummond*, than he would reveal at that Time: That he told her alſo, he had that on Board, when the Ship was ſeiz'd in *Leith* Road, that he would not have had fallen into the Seizers' Hands for twice the Value of the Ship; and that he threw it over-board.

Brown's *Evidence.*

John Brown, Maſter of a Ship, teſtified, That he went on Board the Ship *Worceſter* by an Order of Council, and found the Hatches faſt ſealed; that he opened them, and ſaw the Goods on the Larboard Side were much damaged, and few of the packed Goods were marked or numbered, as was cuſtomary. *Archibald Hodge*, another Maſter of a Ship, who ſaw the Goods unloaded, teſtified the ſame.

Glen's *Evidence.*

John Glen, Goldſmith, teſtified, That being on Board *The Worceſter*, after ſhe came into *Leith* Road, Captain *Madder* took a Seal out of his Pocket, and asked him What he thought of the *Scots African* and *India* Companies Arms? and giving the Witneſs the Seal into his Hands, he found in it the St. *Andrew's* Croſs, a Camel, with a Caſtle on its Back, and a Ship, with the riſing Sun above the Helmet, and two wild Men as Supporters: That the Seal was about the Bigneſs of an *Engliſh* half-Crown, and the Handle of *Lignum vitæ*; but that the Seal produced in Court was not the ſame which Captain *Madder* ſhewed him.

Papers found on Board.

The following Extracts of Books and Papers, found on Board the Ship Worceſter, *were alſo made uſe of as Evidence*, viz.

The Inſtructions or Orders given by the Freighters of *The Worceſter*, to Mr. *Robert Callant*, Supercargo, in which were theſe Words: We would have you write to us by all Opportunities, eſpecially from *Sinde*, by any Ships bound from thence to *Perſia*; and for the greater Secrecy, (eſpecially of the Letter to be ſent to *Mauritius* for us), here-under is an Alphabet for you to write to us by: Your Subſcription muſt be in common *Engliſh*, directing all ſuch Letters to Captain *Thomas Bowrey*, in *Well-cloſe-Square*, *London*.

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(Note, *At this Place the whole Alphabet is inſerted diſtinctly, and above each Letter a different Character is ſet down, to be uſed in Place of the Letters of the Alphabet*).

When your Cargo for *England* is provided, or near compleated, then we would have you ſell the Sloop for what you can get, and inveſt the Produce in Goods for *England*.

And lower, among the ſame Orders, in another Article, are theſe Words.

You muſt engage the Maſter of the Sloop not to let any Letter fro[illegible] himſelf or any other, be ſent to *England*, but only our Letter, in which you may inſert the Names of any dead: And for the Care and Secrecy of thoſe who go in the Sloop, in caſe no Letter or News comes to *England*, but our Letter concerning our Buſineſs, then we will, on the Return of the Ship, give the Maſter and Crew one Month's Pay *gratis*, and they ſhall alſo have their Shares of the Benefit promiſed the Ship's Company for the Whale Fiſhing.

By a Letter, dated London, the 3*d of* February, 170½. *from Captain* T. B.----y, *to Mr.* Callant, *the ſaid Captain adviſes him in theſe Words:*

For the greater Security of our Affairs, when you write by the Alphabet in your Inſtructions, I would have you carry the laſt Letter of each Word, to be in the Room of the firſt Letter to the next Word; as for Example:

Capt. *Tho. Bowrey*, Sir, we are all well.

Captai nthoma sbowre, yſi, rwe ear eal lwell.

Make no Title (as is uſual) to begin your Letter, nor no Date, nor Compliment, nor Name at laſt; but let all be comprehended in the Lines of your Letter, ſo as to make no Diſtinction; and make but one Paragraph of all your Letter, and if any Men be dead, ſet their Names immediately after your own Name, ſubſcribed to the Letter, all in Characters before directed; and pleaſe to keep this as Directions therein.

By another Letter from the ſaid Captain T. B----y *to the ſaid Mr.* Callant, *dated* London, *the* 16*th of* February, 170½, *he adds, concerning the aforeſaid Cypher, in theſe Words:*

On further Conſideration, I think, I have committed an Error in my Letter to you Yeſterday, it being wrote in it as, *(viz.)*

Captai nthoma sbowre yſi rwe ear eal lwell.

That is, Captain *Thomas Bowrey*, Sir, we are all well.

Now, I doubt the naming any Name in the Beginning, or making any Compliment there, may be a Means to find the Key of the Alphabet; therefore pray ſtrike out of the Letter I ſent you yeſterday, as above done, and begin directly with your Buſineſs, following the Directions given you. And whereas you are ordered to direct your ſaid Letter to me, I would not have you mention my Name in the

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the Superſcription, but direct the ſaid Letter to Mr. *Nicholas Pope*, Scrivener, in *Nicholas-Lane*, *London*, to pay five Pounds to the Bearer, as in your Inſtructions.

Part of the Priſoners' Defence.

The Priſoners' Counſel made ſome Objections to the Form of the Indictment, which were over-ruled by the Court; they alſo made ſeveral Objections to the Evidence; as, that the two Blacks, that were produced as Evidence againſt them, were not Chriſtians, and that they were neither of them worth ten Pounds *Scots*. They alſo inſiſted, that *Anne Seaton*, being a Woman, was not a legal Witneſs.

Replied to.

To which the Counſel for the Queen anſwered, That though, by the Laws of *Scotland*, one who was not worth ten Pounds could not be a Witneſs in ſome Caſes, by the Laws of that Kingdom, yet in Crimes ſo atrocious and occult, and committed againſt the Law of Nations, this Rule did not hold: And, as to the Blacks not being Chriſtians, this was a Miſtake, for they profeſſed themſelves ſuch; and they inſiſted alſo, that a Woman was a good Witneſs in Crimes of this Nature.

Mr. Solicitor's Obſervations on the Evidence.

Sir *David Dalrymple*, the Queen's Solicitor, after the Evidence was concluded, made his Obſervations upon it, and afterwards the Priſoners' Counſel did the ſame; but the *Scots* have thought fit to ſuppreſs the Speeches made by the Priſoners' Counſel, and given us only Sir *David Dalrymple*'s: In which Sir *David*, having ſhewn the Nature of the Crime, and the aggravating Circumſtances this Caſe was attended with, obſerved, That the firſt Diſcovery of this Matter came from the Priſoners themſelves, from Words dropped in Paſſion, or expreſſed under the Weight of Guilt, concerning the Villanies that had been perpetrated in this Voyage: That the Evidence of the Blacks was fortified by the Journals of the Ship *Worceſter*, which gave an Account of the Sloops being furniſhed with Arms, in the Month of *February*, as the Indictment charged: That it appeared alſo, from the Journals, that *The Worceſter* ſprung a Leak upon the Coaſt of *Malabar*; and although they might have refitted her at *Goa* or *Surat* on that Coaſt, they choſe rather to make a dangerous Voyage of ſeven or eight hundred Leagues, in a leaky Veſſel, than refit her on the *Malabar* Coaſt, where they were apprehenſive of a Diſcovery. That the Cypher which was given the Captain to write by to his Employers, and that extraordinary Secrecy enjoined (as appeared from the Papers found on Board), ſhewed, that from the Beginning ſome ill Deſign was intended; fair Trading required no ſuch extraordinary Cautions.

Another Inducement to believe the Ship *Worceſter* was ſent out upon an ill Deſign, was, that being of two hundred Tons Burthen, and manned by thirty ſix Men, her whole Cargo, outward bound, did not amount to the Value of a thouſand Pounds; and the greateſt Part of this Cargo conſiſted in Arms: That it ſeemed exceeding ſtrange, a Voyage ſo hazardous and expenſive, ſhould be undertaken with ſo ſmall a Stock, unleſs ſomething elſe beſides Trading was intended; concluding, upon the whole, that in ſo dark a Crime, committed in a Place ſo diſtant and ſolitary, a more convincing Proof could not be expected.

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Minutes of the Obſervations made by the Priſoners' Counſel.

There are ſome ſhort Notes added to this Trial, containing Minutes of what the Priſoners' Counſel inſiſted on; as, that the Witneſſes againſt them did not agree in their Evidence; that the Blacks were evidently miſtaken in the Times they had ſworn to; and that it was highly improbable they ſhould have acted the Part of Pirates, ſince they ſent their Owners an Account of their Voyage from Time to Time, and were not afraid to be ſeen in any Port in *Europe*, and particularly in *Scotland*, the Nation they were ſuppoſed to have wronged: That Captain *Green* and his People were Men of fair Characters, and under no Neceſſity of turning Pirates; nor did they endeavour to fly or conceal themſelves, as they would have done, if they had been conſcious of any Guilt.

After the Counſel had concluded, the Jury were ordered to withdraw, and bring in their Verdict on the 16th of *March*, to which Day the Court adjourned; and on the Sixteenth of *March* the Jury brought in the following Verdict, *(viz.)*

All but Reynolds *convicted.*

That they, by Plurality of Voices, (being fifteen in Number) find, that there is one clear Witneſs as to the Piracy, Robbery, and Murder; and that there are accumulative and concurring Preſumptions proved for the Piracy and Robbery; but find that *John Reynolds*, ſecond Mate of the Ship *Worceſter*, was on Shore at the Time of the Action.

The Court adjourning afterwards to the 21ſt of *March*, then pronounced Sentence on the following Priſoners, (*viz.*) on Captain *Thomas Green*, *John Madder*, *James Simpſon*, *Henry Keigle*, *George Haines*, *George Glen*, *Alexander Taylor*, *Andrew Robertſon*, *George Kitchen*, *James Burn*, *John Bruckley*, *Samuel Wilcocks*, *John Bannantine*, and *Thomas Linſteed*:

Sentence paſſed.

That they ſhould be taken to the Sands of Leith, *within the Flood-Mark, and there hanged till they were dead*, (the firſt Five on the 4th of *April*, the next Four on the 11th of *April*, and the remaining Five on the 18th of *April*); *and that all their moveable Goods and Geer, and particularly the Ship* Worceſter, *ſhould be forfeited to Her Majeſty, ſaving to all Perſons, claiming a Right to the ſaid Cargo, their reſpective Claims.*

Linſteed *reprieved.*

But *John Reynolds* was acquitted, and the Court recommended *Thomas Linſteed*, Aſſiſtant to the Supercargo, to the Queen's Mercy, he being on Shore at the Time the ſaid Ship was taken.

The reſt executed.

Captain *Green* and the reſt of the Priſoners, 'tis ſaid, were afterwards executed, in Purſuance of the Sentence, (except *Linſteed*): But I am not certain how many of them were executed.

Some Confeſſions by the Priſoners after Conviction.

The *Scotch*, as a further Evidence of the Priſoners' Guilt, have given us the Confeſſions of ſome of them, under their Hands, after they were convicted, and particularly *Linſteed*'s, (the Aſſiſtant-Supercargo), whom they recommended to the Queen's Mercy.----He depoſed on the 16th of *March*, before Sir *James Stuart*, the Queen's Advocate, that he was ſent to *Callicoiloan*, with Mr. *Hammond*, to diſpoſe of ſome Goods,

Linſteed's *Confeſſion.*

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Goods, in the Beginning of the Year 1703, and that they remained at the ſaid Town of *Callicoiloan* about three Months, during which Time ſome Fiſhermen came thither, and reported that *The Worceſter* had an Engagement with another Ship; and ſending thereupon to know the Truth of it, were anſwered by the Officers of *The Worceſter*, that they ſhould mind their own Buſineſs, and not concern themſelves about it. That *Coge Commodo*, the Ship's Merchant, afterwards told them, he had bought of ſome Pirates, a Ship of an hundred Tons, and twelve or thirteen Guns, being of the Country Building; but they underſtood afterwards, from the *Dutch* and *Portugueſe*, that the Ship *Coge Commodo* had bought, was brought into *Keilon*, in the Night-Time, by ſome of *The Worceſter*'s Crew: And that when they went on Board again, their Men would give them no Account of the Matter.

Haines's *Confeſſion.*

George Haines alſo confeſſed, on the 27th of *March*, before Mr. *James Graham*, Judge of the Admiralty, That, when *The Worceſter* lay in the *Downs* outward-bound, he received ſeveral Letters, intimating, that it was reported in *London* their Ship was going out upon ſome ill Deſign, and that thereupon he attempted to get on Shore, and leave her, but was prevented: That when they came upon the Coaſt of *Malabar*, ſome of their Crew talked of their turning Pirates; and, before they were a Month on that Coaſt, they endeavoured to take a Country Boat, but ſhe got away.

That having built and manned the Sloop and put Guns on Board her, ſhe left the Ship about eight Days; and on her Return, *John Roberts* appearing melancholy, and he *(Haines)* asking the Reaſon of it, *Roberts* confeſſed he was acceſſary to the cutting off ſeveral Men's Heads at *Sacrifice Rock*, between *Tillicherry* and *Callicut*. That afterwards *The Worceſter* and the Sloop ſailed together, and took a Ship of about ſeventy Tons, ſquare-ſterned, and painted in the Quarters red and yellow, which was of *Indian* Building, but had about twelve or fourteen Men on Board, all white, and generally ſickly; and he heard afterwards they were *Britons*, but he knew not what became of them, being kept between Decks: He doubts they were murdered, becauſe they could not be put on Shore on that Coaſt, there being ſo many *Engliſh* and *Dutch* Factories ſtanding near each other.

The next Day after the Ship was taken, ſhe was carried by ſome of the Crew to *Callicoiloan*, and ſold to *Coge Commodo* for 1500 Roupees, (two Shillings and Threepence each): That ſome Bales of *China* Root and four Cheſts of Copper were taken out of her, and ſold afterwards to a *Bannian* Merchant at *Bengal*. That he underſtood *Coge Commodo* was a great Aſſiſter of Pirates, and bought Goods of *Kidd* and *Avery* when they were upon that Coaſt. That the Deponent kept a Journal during the Voyage, which contained the Subſtance of this Confeſſion; but when *The Worceſter* was ſeized in *Leith* Road, he threw it over-board, leſt it ſhould fall into the Seizers' Hands.----- That he ſhould have made this Confeſſion ſooner, but was always aſſured by Captain *Green*'s Agents, That the Defence made for the Crew would certainly bring them off; and if they all agreed in one Story, and kept themſelves reſerved, there would be no Fear; for nothing could be proved that could affect them; and *Wilcocks*, the Surgeon's Mate, informed him that he ſaw a Letter from the Owners of *The Worceſter* in *London*, directed to Captain *Green*, which ſaid, *That although the Crew were condemned in* Scotland, *they had Pardons ready to ſend down for them.*

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The next Day, *viz.* the 28th of *March*, 1705, the ſaid *George Haines* added to the above Confeſſion, That after the ſaid Ship was taken on the *Malabar* Coaſt, he ſaw the Men therein killed and murdered with Pole-Axes and Cutlaces, and their dead Bodies put into the ſaid Sloop, and afterwards thrown over-board: That he heard the Men that were taken ſpeak *Scotch* before they were killed; and *The Worceſter*'s Crew underſtood that it was Captain *Drummond*'s Ship, particularly he heard Captain *Madder*, *John Bruckley*, and *Edward Carry* ſay ſo; and, laſtly, that he would have declared the Ship they took belonged to Captain *Drummond* in his former Examination, but he was afraid it would have induced the Government to have dealt the more ſeverely with him.

Bruckley, *the Cooper's, Confeſſion.*

John Bruckley, Cooper of *The Worceſter*, confeſſed, on the 21ſt of *March*, 1705, before Mr. *Graham*, Judge Admiral, That ſome Time after they came upon the Coaſt of *Malabar*, both the Ship and Sloop gave Chaſe to a Country Boat, which eſcaped them by her Oars: That the Sloop being damaged by Worms, was refitted at *Callecut*, manned with ten Men, two Guns, and two Pattereroes, with ſmall Arms, and ordered to ſail towards *Tillicherry*; and ſix or eight Days afterwards the Sloop came back, chaſing another Ship; whereupon *The Worceſter* ſlipt her Anchors, and made out to Sea to meet them: That he ſaw the Sloop board the Stranger's Ship towards Night, and that Captain *Madder* then went off with the Longboat manned: That he ſaw the Men on board the Prize were white Men, but knows not what became of them, becauſe he ſuppoſes they were put on board the Sloop, which was ordered away next Morning: That the Prize was manned with ſome of *The Worceſter*'s Crew, and ſailed with *The Worceſter* to *Callicoiloan*, where they met with the Sloop again; and they all three lay at an Anchor there, the Prize riding at the Stern of *The Worceſter*, and was afterwards ſent into the River of *Callicoiloan*, and ſold to *Coge Commodo:* That *The Worceſter* and the Sloop alſo took another Ship, on which were both Whites and Blacks aboard; but knew not what became of them, the Sloop going off ſoon after the Engagement, and not returning in three or four Days: That this Deponent was afterwards in a *Mooriſh* King's Houſe, with about ſix of *The Worceſter*'s Crew, and ſuppoſed that King was *Coge Commodo*'s Maſter, who bargained for one of the Ships that were taken.

The ſaid *John Bruckley* alſo, on the 3d of *April*, 1705, came before Sir *Robert Forbes*, Judge of the Admiralty, and confirmed his former

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former Confeſſion; adding, That the Men on Board the Ship taken near *Callicoiloan* were twelve or fourteen in Number, moſt of them white Men, and he heard them ſpeak *Engliſh:* That they were put into the Sloop and killed there, and the Goods belonging to the ſaid Ship were brought on board *The Worceſter*, conſiſting of *China* Root and four Cheſts of Copper; and the Copper was ſold at *Bengal*, to a *Banian* Merchant; and that he heard *Callant* the Supercargo, Captain *Madder*, *John Roberts*, and *Edward Carry* ſay, that the Ship they took was Captain *Drummond*'s Ship, and belonged to the *Scotch African* Company.----- And, laſtly, that when *The Worceſter* ſailed from the *Downs*, he did not know whither they were bound; but frequently heard it ſaid, they were going upon a Diſcovery.

Remarks on Green's Trial.

I doubt we muſt give up our Countrymen, and acknowledge them guilty of this barbarous Fact; the Evidence ſeems to be too ſtrong to be reſiſted. Theſe are ſome of the Fruits of ſuffering Merchants to combine, and form themſelves into excluſive Companies, who ſeldom ſtick at any Villany to monopolize a Trade to themſelves: Never was a Nation ſo cruelly and unjuſtly dealt with, as the *Scots* have been by our *Eaſt-India* Company.

It was by their Influence, their Bribery, and other deteſted Arts, that the *Scots* were driven from their Settlement on the *Iſthmus of Darien*, to the unſpeakable Damage of *Great Britain* in general, as well as of the *Scots* in particular; for had the *Scots* been enabled or permitted to maintain their Colony of *New Edinburgh* till the Beginning of Queen *Anne*'s Reign, the Treaſures of the *Spaniſh Weſt-Indies* could never have been ſo effectually made uſe of by the Kings of *France* and *Spain*, to ſupport that War againſt the Confederates. We ſhould either have come in for a Share of thoſe Treaſures, or at leaſt have prevented their being brought to *Europe*, and employed againſt us. We ſuffered ſufficiently for countenancing and aſſiſting our *Eaſt-India* Company to drive the *Scots* from thence; and this piratical Enterprize was but a Continuance of the ſame Injuſtice and Oppreſſion, and was entered upon with the like View of expelling the *Scots* from the *Eaſt-India* Trade, by Force or Fraud.

The *Eaſt-India* Company, by Virtue of the Acts of Parliament, paſſed for their Eſtabliſhment after the Revolution, looked upon themſelves, poſſibly, to be authorized to exclude all other Nations from that Trffick, as well as their Fellow-Subjects; or what had they to do to fall upon the *Scots* in this Manner, who were then as independent of *England* as any other People? But this was a Leſſon they had learned from the *Portugueſe* and *Dutch*.

The *Portugueſe*, for many Years after they found out the Way to the *Eaſt-Indies* by the *Cape of Good-Hope*, claimed theſe Seas as their own, and made no Scruple of ſeizing or ſinking *Dutch* and *Engliſh* Ships, or thoſe of any other Nation, that preſumed to trade with the People of *China* or *India* without their Leave; which gave the *Engliſh* and *Dutch* a fair Occaſion of aſſerting their Right of navigating thoſe Seas, and of trafficking and correſponding with the *Indian* Princes; and this at Length proved the Ruin of the *Portugueſe* in that Part of the World; the *Engliſh* and *Dutch* driving them from their principal Settlements, and planting themſelves in their Room. The *Dutch* afterwards treacherouſly and cruelly expelled the *Engliſh* from the Spice Iſlands, their moſt valuable Acquiſitions in *India*, and then ſet up the ſame Pretence the *Portugueſe* had done, that no Nation had a Right to intermeddle in the Spice Trade but themſelves; which we, their good-natured Bubbles, have permitted them to monopolize ever ſince; and though they will not ſuffer us to trade with any Country where the fine Spices grow at this Day, yet have they wheedled us into their Meaſures ſo far, that we are become their Bullies and Tools, to exclude the Emperor and all other Nations from a Share in that leſs profitable Trade which they are pleaſed to ſuffer us to carry on ſtill in *India*. I muſt confeſs, it is paſt my Comprehenſion, to underſtand what Right we or the *Dutch* have to exclude any *European* Nation from trading with the Princes and People of *India*, and to give Orders to ſink the Ships and murder the Men that frequent thoſe Seas without their Permiſſion; though I make no Manner of Queſtion, that it was upon this ſuppoſed Right the *Eaſt-India* Company had, of excluding all other Nations from that Trade, that they fitted out *The Worceſter* to deſtroy Captain *Drummond*, who went out in the Service of the *Scots Eaſt-India* Company.

But here we find how dangerous it is to be the Inſtruments to execute ſuch inhuman Orders: Thoſe who employed theſe Wretches to perpetrate this Villany, pretended they would defend them, or at leaſt procure their Pardon if they were convicted; but I don't find they ever made any Application to the Throne in their Behalf: They were aſhamed of the Action, probably, and left their miſerable Agents to ſuffer for their Credulity. If there be no Truſt in Princes, in ſuch Caſes, much leſs can a Man confide in raſcally Companies.

It is impoſſible not to reflect on the Juſtice of Providence alſo in this Caſe, which brought theſe Villains, a great deal out of their Way, to the only Place in the World where their Crimes would have been enquired into, and puniſhed as they deſerved: No Nation in *Europe*, but the *Scots*, had been wronged by them, and no other People, therefore, could have had that Reaſon to ſee Juſtice executed upon them.

1706. 5 Annæ.

The Trial of ROBERT FIELDING, Eſq; for *Bigamy*, at the *Old-Baily*, *London*, on the 4th of *December*, 1706. 5 *Annæ*.

1706. 5 Annæ.

Fielding's *Trial.*

The Indictment.

THE Indictment charged, That the ſaid *Robert Fielding*, late of the Pariſh of St. *James*'s, *Weſtminſter*, in the County of *Middleſex*, did, on the 9th of *November*, 5th of Q. *Anne*, at the Pariſh aforeſaid, take to Wife *Mary Wadſworth*, Spinſter, and that afterwards, on the 25th of the ſame Month of *November*, he did, at the Pariſh of St. *Martin's in the Fields*, in the ſaid County, feloniouſly take to Wife the Moſt Noble *Barbara* Dutcheſs of *Cleveland*, his ſaid former Wife, *Mary*, being then alive; againſt the Queen's Peace, and the Form of the Statute in that Caſe made and provided.

The Evidence.

It appeared, by the Evidence, that Mrs. *Deleau*, a beautiful young Widow, was left worth ſixty thouſand Pounds, by her late Husband Mr. *Deleau*; and that in *Auguſt*, 1705, Mr. *Fielding*, the Priſoner, applied himſelf to one Mrs. *Streights*, and conſulted her how he might procure Acceſs to that Lady. Mrs. *Streights* informed him, ſhe had little Knowledge of Mrs. *Deleau* herſelf, but that there was one Mrs. *Villars*, her Acquaintance, who uſed to cut the Lady's Hair, that might be ſerviceable to him in that Affair; and thereupon Mrs. *Streights* was authorized by Mr. *Fielding* to offer Mrs. *Villars* 500 *l.* if ſhe would uſe her Endeavours to promote a Match between Mr. *Fielding* and Mrs. *Deleau*. Mrs. *Villars*, it ſeems, undertook to ſerve the Major-General *(Fielding)*; but finding he had little or no Knowledge of Mrs. *Deleau*, and that his Project was altogether romantick, ſhe introduced him to Mrs. *Mary Wadſworth*, an Acquaintance of hers, who had agreed with Mrs. *Villars* to perſonate Mrs. *Deleau*; and Mr. *Fielding* was married to Mrs. *Mary Wadſworth*, at his own Lodgings, by a Popiſh Prieſt, on the 9th of *November*, 1705; the Prieſt performing the Ceremony in *Latin*; only when he came to the contracting Part, Mrs. *Wadſworth* inſiſted, that this ſhould be in *Engliſh*, and the Prieſt accordingly demanded of Mr. *Fielding*, *If he would have this Gentlewoman to be his wedded Wife?* He anſwered, *Yes, with all my Heart*; and then asking Mrs. *Wadſworth*, *If ſhe would have this Gentleman for her Husband?* She anſwered, *Yes*; and the Ceremony being concluded, they went to Bed together, and lay till Morning; and the Witneſſes ſaw them in Bed together ſeveral Times afterwards; nor did Mr. *Fielding* diſcover he had been impoſed upon till the *May* following, and yet did he in the Interim (though he believed himſelf married to that great Fortune Mrs. *Deleau)*, marry the Dutcheſs of *Cleveland*, *viz.* on the 25th of the ſame Month of *November*, 1735; and lay ſometimes with the Dutcheſs, and ſometimes with Mrs. *Wadſworth*, at his own Lodgings; for Mrs. *Wadſworth*, who perſonated Mrs. *Deleau*, pretended, ſhe durſt not declare her Marriage publickly, and admit him to go to her Houſe, for fear of diſobliging her Father, from whom ſhe had great Expectations.

Mr. *Fielding* imagining he had been ſure of Mrs. *Deleau*'s Fortune, uſed the Dutcheſs of *Cleveland* very barbarouſly, who complaining to ſome Noble Peers, her Sons, they diſcovered ſomething of his Marriage with Mrs. *Wadſworth*, and procured Mrs. *Villars*, and *Boucher*, Mr. *Fielding*'s Man, to appear as Witneſſes againſt him; and Mr. *Fielding* being convicted of Felony, in marrying two Wives, the Dutcheſs was releaſed from her Tyrant; and the Beau had the Mortification to find himſelf tricked by two Women of the Town, on whom the cowardly Poltroon took his Revenge by beating them, but could never break the Shackles he had taken ſo much Pains to put on.

Convicted of Felony.

From this Tranſaction we may obſerve, 1. That a Marriage by a Popiſh Prieſt is good in our Law.

Remarks on Fielding's Trial.

2. That the Marriage-Contract may be performed without naming Names, even where one of the Parties perſonates another: If the Contract be mutual, and the Man ſays no more than, *I take this Woman* (or this Lady) *to be my wedded Wife*; and the Woman ſays, *I take this Man* (or this Gentleman) *for my Husband*, it is a legal Marriage; they are Man and Wife to all Intents and Purpoſes.

Nay, if the Conſent of the Parties is not demanded by a Prieſt, but by a Layman, and they mutually conſent to be Man and Wife in Words of preſent Tenſe, it is ſuch a Contract (where there is Proof of it) as can never be avoided: And if it be not a perfect Marriage, yet either Party may compel the other to ſolemnize ſuch a Marriage in a Church; and if either Party ſhould marry another after ſuch a Contract, he or ſhe may be compelled to return to their firſt Spouſe; their Iſſue by any other are illegitimate.

1708. 7 Annæ.

The Trial of JAMES STIRLING, Laird of *Keir*, ARCHIBALD SEATON, Laird of *Touch*, ARCHIBALD STIRLING, Laird of *Carden*, CHARLES STIRLING, Laird of *Kippendavie*, and PATRICK EDMONSON, for *High-Treaſon*, at *Edinburgh*, the 15th of *November*, 1708. 7 *Annæ*.

1708. 7 Annæ.

Stirling's *Trial.*

The Indictment.

THE Indictment charges the Priſoners with High Treaſon, in aſſembling in Arms at the Time the Pretender and a Body of *French* Forces were upon the Coaſt of *Scotland*, in the Year 1707, with an Intent to join them; and for correſponding with the Enemy.

There

1708. 7 Annæ.

Acquitted for Want of Proof.

There being no Proof for what Intent the Priſoners aſſembled, or of their correſponding with the Enemy, they were acquitted.

This being a foreign Trial, and of no great Moment, I forbear to enlarge upon it, that I may have the more Room for thoſe that deſerve our Attention better.

1708. 7 Annæ.

1709-10. 8 Annæ.

Dr. Sacheverel's Trial.

The Trial of Doctor HENRY SACHEVERELL, for *High Crimes and Miſdemeanors*, before the Houſe of Peers, in *Weſtminſter-Hall*, in the Months of *February* and *March*, 1709-10. 7 & 8 *Annæ.*

1709-10. 8 Annæ.

A Complaint of his Sermons.

A Complaint was made in the Houſe of Commons on the 13th of *December*, 1709, of two printed Sermons; the one intitled, *The Communication of Sin*; preached at the Aſſizes at *Derby*, the 15th of *Auguſt*, 1709: And the other intitled, *The Perils of falſe Brethren, both in Church and State*; preached before the Lord Mayor and Citizens, at the Cathedral of St. *Paul*'s, on the fifth of *November*, 1709, by *Henry Sacheverell*, D. D. And ſeveral Paragraphs thereof being read, it was reſolved,

Voted ſcandalous, &c.

That the ſaid Sermons were malicious, ſcandalous, and ſeditious Libels, highly reflecting on Her Majeſty and her Government; on the late happy Revolution, and the Proteſtant Succeſſion, and both Houſes of Parliament; tending to alienate the Affections of Her Majeſty's good Subjects, and to create Jealouſies and Diviſions amongſt them.

The Doctor being ordered to attend the Houſe next Day, was called and examined, If he owned thoſe Sermons? Which he did, and then withdrew: When a Queſtion being propoſed, That Dr. *Henry Sacheverell* be impeached of High Crimes and Miſdemeanors; it was thought proper to call him again firſt, and demand, If he had any Thing to offer to the Houſe in his Excuſe? Whereupon the Doctor ſaid,

Mr. Speaker,

"I AM very ſorry I am fallen under the "Diſpleaſure of this Houſe: I did not i-"magine any Expreſſions in my Sermons "were liable to ſuch a Cenſure as you have "paſſed upon them. If you had been pleaſed "to have favoured me ſo far as to have heard "me before you paſſed it, I hope I ſhould "have explained myſelf ſo as to have pre-"vented it."

He is impeached.

After which, the Doctor was ordered to withdraw; and it was reſolved to impeach him of High Crimes and Miſdemeanors: And Mr. *Dolben* accordingly carried up the Impeachment to the Lords; acquainting them, That the Commons would, in due Time, exhibit Articles againſt him.

Not ſuffered to be bailed.

And the Doctor with his Bookſeller, Mr. *Henry Clements*, were taken into Cuſtody of the Serjeant at Arms: And though the Doctor petitioned the Commons to be admitted to Bail, they refuſed it, there being but 79 *Yeas* to 114 *Noes*, when the Queſtion was put.

Debates thereupon.

There were great Debates in the Houſe on bailing the Doctor: Some were of Opinion, they had no Power to take Bail; others inſiſted, they had a diſcretionary Power; while a third Party ſaid, If they had it in their Power, the Doctor did not deſerve ſo much Indulgence: Others ſaid, in Favour of Liberty, If they could, they ought to admit him to Bail: And that they could bail a Priſoner, they argued from the Equity and Reaſonableneſs of the Thing, That thoſe who could commit, might bail him; and produced two Precedents, *viz.* The Caſe of Mr. *Seymour*, and that of the Smugglers, impeached for High Crimes and Miſdemeanors; in one of which, the Perſons impeached and committed by the Houſe of Commons, were admitted to Bail; in the other, the Commons, upon their Petition, conſented to bail them; and they had been bailed, but the Sureties made Objections to the Condition of their Bonds, and would not ſubmit to it. Beſides, it was urged, that this Caſe was in itſelf bailable; and ſo agreed by all Gentlemen: And that the Doctor's Hardſhip might be the greater, becauſe it was probable, if the Commons did not bail him, he muſt lie in Cuſtody, when bailable by Law, till after the Receſs of Parliament: For the Articles not being exhibited to the Lords againſt him, it was thought, the Lords would not take him out of the Cuſtody of the Commons, and commit him upon a general Charge; and till they committed him, they could not bail him: This was his Caſe; for upon Application to the Lords, they refuſed to commit him, till the Commons had exhibited their Articles. The Lords ſaid, The Commons might never exhibit any; and they would not do ſo unreaſonable a Thing, as to commit any one on a general Charge. And ſo he lay a Priſoner, by the Commitment of the Houſe of Commons, in a Caſe bailable by Law, (and for which there were Precedents of the Commons admitting to Bail), from *December* the 14th, to *January* the 12th.

Articles carried up.

Mr. *Dolben* carried up the Articles to the Lords on the 12th of *January*; and the Serjeant at Arms, at the ſame Time, delivered the Doctor to the Deputy Gentleman Uſher of the Black Rod: And the Doctor petitioning the Houſe of Peers to be admitted to Bail, and that he might have Counſel aſſigned him, and a Copy of the Articles; their Lordſhips granted all his Requeſts: And on the 25th of *January*, Dr. *Sacheverell* attended the Houſe of Lords, and delivered in his Anſwer to the Articles of Impeachment againſt him; which their Lordſhips having communicated to the Commons, they ſent up their Reply on the third of *February*: And the next Day, the Lords ſent a Meſſage to the Commons, acquainting them, That they had appointed the *Thurſday* following for the Trial of Dr. *Sacheverell*.

The Lords bail the Doctor.

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cheverell, at the Bar of the Houſe: But the Commons reſolving afterwards, that they would be preſent at the Trial, as a Committee of the whole Houſe, and acquainting their Lordſhips with it, and deſiring convenient Accommodations might be made for them; the Houſe of Peers ordered the Lords with White Staves, to move Her Majeſty, to give Orders for preparing a Place in *Weſtminſter-hall* for the Trial: And Her Majeſty thereupon gave Orders for preparing a Court in *Weſtminſter-hall*; which taking up ſome Time, the Lords put off the Trial till *Monday* the 27th of *February*.

A Court erected in Weſtminſter-Hall.

The Trial appointed Managers for the Commons.

The Commons thereupon appointed the Gentlemen, who had been of the Committee for drawing up Articles againſt the Doctor, to be their Managers at the Trial, *viz.* Sir Sir *John Holland* Comptroller of Her Majeſty's Houſhold, Mr. Secretary *Boyle*, Mr. *Smith* Chancellor of the *Exchequer*, Sir *James Montague* Attorney-General, *Robert Eyre* Eſq; Sollicitor-General, *Robert Walpole*, Eſq; Treaſurer of the Navy, Sir *Joſeph Jekyll*, Mr. *Lechmere*, Mr. *Dolben*, Sir *Thomas Parker*, Sir *Peter King* Recorder of the City of *London*, Sir *John Hawles*, the Lord *William Paulet*, the Lord *Conningsby*, Mr. *Spencer Cowper*, Mr. *Thompſon*, Lieutenant-General *Stanhope*, Lieutenant-General *Mordaunt*, Mr. *Compton*, and Sir *David Dalrymple*.

The firſt Day of the Trial.

On *Monday* the 27th of *February*, being the Day appointed for the Trial, the Lords came down from their Houſe, about Noon, to the Court erected in *Weſtminſter-Hall*: And the Commons having taken the Places provided for them, the Serjeant at Arms made Proclamation for the Doctor to appear and ſave his Bail; whereupon he came to the Bar and kneeled; his Counſel, Sir *Simon Harcourt*, Mr. *Dodd*, Mr. *Phipps*, Mr. *Dee*, and Dr. *Henchman*, ſtanding near him.

The Lord Chancellor *Cowper* then commanded the Doctor to riſe; and Proclamation being made for the Proſecutors to appear and make good their Charge, the Lord Chancellor acquainted the Doctor, that it was unneceſſary to give him any Directions for his Defence, the Lords having aſſigned him Counſel; adding, That they had alſo made an Order for ſummoning his Witneſſes, and admitted him to Bail, on the firſt Application, that he might be the better able to provide for his Defence; and that he had all the Time he deſired to prepare himſelf; and ought ever to remember their Lordſhips Indulgence to him.

The Tenor of the Articles.

Then the Articles of Impeachment were read: The Preamble whereof recites, That the late King *William*, when Prince of *Orange*, undertook, with an armed Force, a glorious Enterprize, for delivering this Kingdom from Popery and Arbitrary Power; in which he was joined and aſſiſted by many Subjects of this Realm, well affected to their Country: And that God being pleaſed to crown it with Succeſs, the late happy Revolution took Effect, and was eſtabliſhed: And whereas the ſaid glorious Enterprize had been approved by ſeveral Acts of Parliament, declared to be neceſſary, and that the ſame ought to be juſtified; and the happy Conſequences of it were the Enjoyment of God's true Religion, and the Laws and Liberties of the Kingdom; the uniting the Subjects in Intereſt and Affection, by a Toleration of Diſſenters; the Preſervation of Her Majeſty, the Succeſſion of the Crown in the Proteſtant Line, and the Union of the two Kingdoms: And whereas the Lords and Commons, did, by their Addreſs of 17 *Dec.* 1705, lay before Her Majeſty their Reſolution, That the Church of *England*, which was reſcued from the extremeſt Danger by King *William* III. was, by God's Bleſſing, under Her Majeſty in a moſt ſafe and flouriſhing Condition; and that whoever goes about to inſinuate, that the Church is in Danger under Her Majeſty's Adminiſtration, is an Enemy to the Queen, the Church, and Kingdom: And did beſeech Her Majeſty to take effectual Meaſures for puniſhing the Authors of ſuch Reports: And Her Majeſty iſſued Her Proclamation accordingly; yet the ſaid *Henry Sacheverell* had preached two Sermons, and printed them, with a wicked, malicious, and ſeditious Intention to ſubvert Her Majeſty's Government and the Proteſtant Succeſſion; to defame Her Majeſty's Adminiſtration to aſperſe the Memory of his late Majeſty, to condemn the Revolution, arraign the Reſolutions of both Houſes of Parliament, create Jealouſies and Diviſions among Her Majeſty's Subjects, and incite them to Sedition and Rebellion.

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Art. 1. That the ſaid *Henry Sacheverell*, in his Sermon preached at St. *Paul*'s, doth ſuggeſt and maintain, That the neceſſary Means uſed to bring about the Revolution, were odious and unjuſtifiable: That his late Majeſty in his Declaration, diſclaimed the leaſt Imputation of Reſiſtance: And that to impute Reſiſtance to the Revolution, is to caſt black and odious Colours upon his late Majeſty and the ſaid Revolution.

Art. 2. Was in Subſtance, That he had ſuggeſted and maintained, That the Toleration was unreaſonable, and the Allowance of it unwarrantable; and reflected on Archbiſhop *Grindall*.

Art. 3. Imported, That he did falſly and ſeditiouſly ſuggeſt and aſſert, That the Church of *England* was in great Peril and Adverſity under Her Majeſty's Adminiſtration, contrary to the Votes of both Houſes.

Art. 4. That he did falſly and maliciouſly ſuggeſt, That Her Majeſty's Adminiſtration, both in Eccleſiaſtical and Civil Affairs, tended to the Deſtruction of the Conſtitution: And, that there were Men of Characters and Stations in Church and State, who were falſe Bretheren; and did themſelves undermine and betray, and encourage and impower others to undermine and betray the Conſtitution: That as a publick Incendiary, he fomented Diviſions, and excited Her Majeſty's Subjects to Arms and Violence: And that his ſeditious Suggeſtions might make the ſtronger Impreſſions, he did wreſt and pervert divers Paſſages of holy Scripture.

All which they were ready to prove, from the ſaid Sermons.

Then the Doctor's Anſwer was read, wherein he denies, he preached or printed the ſaid Sermons

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Sermons with a malicious Intent, as the Preamble to the Articles charges; but ſays, he was induced to print the *Derby* Sermon at the Requeſt of the Grand Jury, who declared their Approbation of it; and the ſaid Lord Mayor having expreſſed his Liking of the Sermon preached at *St. Paul*'s, he did, at his Requeſt, cauſe that Sermon to be printed, and dedicated to him.

Anſwer to the firſt Article.

1. And in anſwer to the firſt Article, he denies, That he ſuggeſted, that the neceſſary Means uſed to bring about the Revolution were odious, and unjuſtifiable; but, on the contrary, endeavoured to clear the Revolution, and his late Majeſty, from the black and odious Colours caſt upon both.

That he had, indeed, maintained, that his late Majeſty diſclaimed the Imputation of Reſiſtance but it was ſuch a Reſiſtance as tended to a Conqueſt, as appeared from that Part of the Declaration he referred to: And, as he deſigned this for the Honour of the late King, it could not be taken as a reflection on him: And obſerved that his Majeſty in that Declaration affirmed, *That his Expedition was intended for no other Deſign but to have a free and lawful Parliament.*

As to his (the Doctor's) maintaining in his Sermons, That thoſe who imputed Reſiſtance to the Revolution, caſt black and odious Colours on the Revolution, and his late Majeſty; he anſwered, that thoſe whom he deſcribed, as caſting black and odious Colours on the Revolution, were not thoſe who imputed Reſiſtance to it, but thoſe who taught, contrary to Law and Goſpel, that the People were the Original of Power, could cancel their Allegiance at Pleaſure, and call their Sovereign to Account for High-Treaſon againſt his Subjects, and even dethrone and murder him for a Criminal; as they did the Royal Martyr.

That he could not find he had given the leaſt Colour for the Accuſation exhibited in this Article, unleſs by his aſſerting, *The utter Illegality of Reſiſtance to the Supreme Power, upon any Pretence whatſoever*; for which Aſſertion he had the Authority of the Church of *England* in her Homilies, ready to be produced; and was adviſed, that the ſaid Aſſertion was agreeable to, and warranted by the Laws of the Land, and divers Acts of Parliament now in Force; and therefore hoped he ſhould not ſuffer for aſſerting the Doctrine of Non-Reſiſtance to the Supreme Powers. But if this Doctrine was declared erroneous, and he ſhould ſuffer for aſſerting it, he truſted that God would enable him to ſhew his Steady Belief of this Doctrine, by a meek and patient Reſignation to whatever ſhould befal him on that Account.

Anſwer to Art. 2.

2. In anſwer to the 2d Article, which charged him with maintaining, That the Toleration granted by Law was unreaſonable and the Allowance of it unwarrantable; he could not inform himſelf, that a Toleration had been granted; but admitted, an Act paſſed 1 *W. & M.* exempting their Majeſty's Proteſtant Subjects from the Penalties of certain Laws; which Exemption he no where ſuggeſted to be unreaſonable, or the Allowance of it unwarrantable.

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But he did, indeed, ſuggeſt it to be one Part of the Characters of a Falſe Brother, *upon all Occaſions to defend Toleration and Liberty of Conſcience, and, to excuſe the Separation, lay the Fault upon the true Sons of the Church, for carrying Matters too high.*

And as to his reflecting on Archbiſhop *Grindall*, he hoped he might be excuſed; becauſe the Archbiſhop had incurred the Diſpleaſure of ſo good and pious a Princeſs as Queen *Elizabeth*; and was ſuſpended till the Day of his Death for permitting Innovations in the Church. However, he hoped, that no Words ſpoken of an Archbiſhop 120 Years after he was dead, would amount to a High Crime and Miſdemeanor.

Anſwer to Art. 3.

3. To the third Article, he anſwered, That he denied he aſſerted the Church of *England* was in Danger under Her Majeſty's Adminiſtration, or intended to arraign the Vote of both Houſes: But he acknowledged he had ſuggeſted, that the Church was in Danger from our National Sins, from Vice and Infidelity, as it was declared to be by an Act of Parliament 9 & 10 *W.* III. And he conceived, ſince the paſſing of that Act, the deteſtable Crimes, for the Suppreſſing whereof that Act was made, were greatly encreaſed.

That the Vote of both Houſes, made four Years ago, concerned thoſe only who *then* inſinuated the Church was in Danger from her Majeſty's Adminiſtration; and could not be preſumed to affect thoſe who now ſuggeſted the Chriſtian Faith was endangered by thoſe Atheiſtical and Irreligious Principles which were daily propagated from the Preſs amongſt us.

Anſwer to Art. 4.

4. To that Part of the 4th Article, which charges him with ſuggeſting that her Majeſty's Adminiſtration tends to the Deſtruction of the Conſtitution; he anſwers, he hath not mentioned her Majeſty's Adminiſtration, or her Miniſters, in either of his Sermons; and was ſo far from cenſuring it, that he had reckoned it among the ineſtimable Bleſſings that were owing to our Deliverance commemorated on the 5th of *November*, *That Her Majeſty, the good and pious Relict of the Royal Family, ſits now happily upon the Throne of her Anceſtors; and prays, that God may long preſerve Her, for the Comfort and Support of the Church: and profeſſes, that what he ſpoke, proceeded from a tender Concern for Her Majeſty's Perſon and Government.*

As to his ſuggeſting that there are *Men of Characters and Stations* in Church and State, that do weaken, undermine, and betray the Church, *&c.* He denies he ſuggeſts ſuch Things of Men of Characters and Stations in Church and State. For *where he ſpeaks of thoſe who weaken, undermine, and betray and encourage and put it in the Power of our profeſſed Enemies, to over turn and deſtroy the Conſtitution*; there Men of Characters and Stations were not mentioned by him: And when he mentions Men of Characters and Stations, twelve Pages afterwards, he ſays nothing of weakening, undermining, or betraying, or putting it in the Power of others to overturn the Con-

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ſtitution; and hopes he ſhall not be anſwerable for a ſuppoſed Reflection, which depends upon the Conjunction of Paſſages widely diſtant, and ſo little relating to each other.

And as to that Part of the Charge in this Article, That as a publick Incendiary, he perſuaded Her Majeſty's Subjects to keep up Diſtinctions of Factions and Parties, and fomented Diviſions; he had, on the contrary, in that Sermon, complained of thoſe who had villainouſly divided us with knaviſh Diſtinctions of High and Low Churchmen; and wiſhed that thoſe invidious Diſtinctions were loſt: And had condemned thoſe, who by falſe Inſinuations, and raiſing groundleſs Jealouſies and Fears, embroiled the Publick, and would bring us into Confuſion: And was ſo far from exciting or ſtirring up Her Majeſty's Subjects to Arms and Violence, that he had aſſerted the utter Illegallity of Reſiſtance to the Supreme Power upon any Pretence whatſoever; which he apprehended to be the chief, if not the only Ground, of the Charge exhibited againſt him in the firſt Article.

That he hoped what he had ſaid in the Dedication of the *Derby* Sermon, *That there are not wanting ſome to preach the Truth, and others to ſupport it, at the Expence of their Lives and Fortunes*; would not be conſtrued, as exciting Her Majeſty's Subjects to Sedition and Rebellion; ſince that Truth which he commends ſome for Preaching, and others for Supporting, is by him oppoſed to the Attempts of thoſe who betray and run down the Principles and Intereſts of our Church and Conſtitution; and ſince he there deſervedly commends the High Sheriff of that County, on account of his ſteady Loyalty and Zeal to ſerve her Majeſty and the Government, for which he hath been ſo remarkably diſtinguiſhed.

In the Sermon preached at St. *Paul*'s, he doth indeed excite Chriſtians, *To put on the whole Armour of God, as wreſtling, not only againſt Fleſh and Blood, but againſt Principalities, againſt Powers, againſt the Rulers of the Darkneſs of this World; againſt Spiritual Wickedneſs in High Places:* But he hath learned from the ſame St. *Paul*, that the Arms of Reſiſtance taken up by Subjects againſt the Higher Powers, are no Part of that Spiritual Armour; and the Principalities and Powers by him mentioned, being plainly diſtinguiſhed from Fleſh and Blood, cannot, he thinks, be ſo far miſinterpreted, as to be underſtood of Earthly Potentates and Rulers.

And as to ſo much of the ſaid 4th Article, whereby it is charged, that he, the ſaid *Henry Sacheverell* doth wickedly wreſt and pervert divers Texts and Paſſages of Holy Scripture, that his ſaid malicious and ſeditious Suggeſtions may make the ſtronger Impreſſions upon the Minds of Her Majeſty's Subjects; the ſaid *Henry Sacheverell* ſays, That having no malicious or ſeditious Suggeſtions to imprint, he could not intend to wreſt any Paſſages of the Holy Scripture to that wicked Purpoſe. And *hard is the Lot of the Miniſters of the Goſpel, if, when they cite the Word of God in their general Exhortations to Piety and Virtue, or in their Reproofs of Men's Tranſgreſſions, or where they are lamenting the Difficulties and Conflicts with which the Church of Chriſt, whilſt militant here on Earth, muſt always ſtruggle; the ſeveral Texts and Paſſages by them cited, ſhall be ſaid to have been by them meant of particular Perſons and Things, and ſhall be conſtrued in the moſt Criminal Senſe, and be made, by ſuch Conſtruction, one Ground of an Impeachment for High Crimes and Miſdemeanors.*

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The Replication of the Commons.

Then the Replication of the Commons to the Doctor's Anſwer was read, wherein they aver the Charge againſt the ſaid *Henry Sacheverell* to be true, and that he is guilty in ſuch Manner as he ſtands impeached.

After which the LordChancellor intimating to the Commons, that they might proceed with their Evidence, Mr. Attorney General, (one of the Managers) ſaid,

Mr. Attorney opens the Cauſe.

My Lords, by Command of the Knights, Citizens, and Burgeſſes, in Parliament aſſembled, we appear in Behalf of all the Commons of *Great Britain*, to make good the Impeachment againſt the Priſoner at the Bar, Doctor *Henry Sacheverell*.

TheMiſdemeanors he ſtands accuſed of, are ſpecified in the Articles which have been juſt now read to your Lordſhips; and the Facts there charged, are ſaid to have been done with a wicked, malicious, ſeditious Intention, to undermine and ſubvert Her Majeſty's Government, and the Proteſtant Succeſſion, as by Law eſtabliſhed; to defame Her Majeſty's Adminiſtration; to aſperſe the Memory of His late Majeſty King *William*; to traduce and condemn the late happy Revolution; to contradict and arraign the Reſolution of both Houſes of Parliament; to create Jealouſies and Diviſions amongſt Her Majeſty's Subjects; and to incite them to Sedition and Rebellion.

My Lords, if this Charge be made good, (as I am apt to think it will) I may preſume to ſay, noWords can either aggravate or alleviate the Offence.

My Lords, our Proofs in this Caſe will ariſe from Evidence which cannot be liable to the Imputation of being over-awed by the Weight of the Proſecutors, or corrupted, or perverted; for out of his ownMouth we ſhall charge him, and by his own Words and Sermons we ſhall convict him.

My Lords, I can with Truth ſay, That it is no ſmall Trouble to the Commons of *Great Britain*, to have this Occaſion of coming in this Manner before your Lordſhips: Could they have ſatisfied themſelves that Her Majeſty's Honour, the Safety of her People, and theProteſtant Succeſſion as by Law eſtabliſhed, were not highly concerned to bring this Man to ſpeedy Juſtice, they could very willingly have ſpared your Lordſhips this Trouble.

But when they conſidered, of what import it was to the Nation, how much it concerned the very Being of our Conſtitution, to diſcountenance and put an End to ſuch Sort of ſeditious Proceedings, as the Doctor and ſome others of his Brethren have been lately practiſing in divers Parts of the Kingdom, they could not think otherwiſe, than that it was Matter fit for the Grand Inqueſt of the Nation to take Notice of: And finding it to be a Cauſe of ſo great Moment to the Publick, they judged it fit to be taken under their own Management,

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Management, and not truſt it to the Deciſion of any inferior Tribunal. And, my Lords, it muſt be agreed, that your Lordſhips are the only proper Judges, when the whole Commons of *Great Britain* find it neceſſary to be the Proſecutors: Nor can Dr. *Sacheverell* have any juſt Cauſe to complain of this Manner of Proceeding, when it gives him ſo publick an Opportunity of defending himſelf (if his Innocence can clear him); and what can he deſire more, when he lies under ſo heavy an Accuſation, than to have your Lordſhips for his Judges, who have already ſhewn your great Indulgence to him, by allowing him (as the Noble Lord from the Woolpack juſt now obſerved) all the Advantages a Man under his Circumſtances can ask, or deſire to have?

My Lords, this Proſecution took its Riſe from a Complaint that was made in the Houſe of Commons the 13th of *December* laſt, of two Books which had been lately printed and publiſhed, under the Name of Dr. *Henry Sacheverell*. The Books being delivered in, ſeveral Paragraphs were read, and, by divers Paſſages, too many for me now to enumerate to your Lordſhips, it did plainly appear, that both Books did contain very ſcandalous and ſeditious Matter, highly reflecting upon the Queen, and her Adminiſtration.

Hereupon the Doctor was ordered to attend; which he did accordingly the next Day, and, at the Bar of the Commons Houſe, owned and avowed both Books to be his; that they were Sermons he himſelf had preached; and that he had cauſed them to be printed and publiſhed.

After ſuch a Confeſſion, your Lordſhips may imagine Her Majeſty's dutiful Commons did expreſs their juſt Reſentments of the great Wrong and Injuries that were done to Her Majeſty, and all that were in Authority under Her, and immediately ordered this Impeachment.

Your Lordſhips will perceive, by Peruſal of the Sermons and Epiſtles Dedicatory, that the Deſign and Driſt of the ſame is to poſſeſs the People with ſtrange Notions, and terrible Apprehenſions of the Danger they are in by a general Mal-Adminiſtration of the Publick Affairs both in Church and State.

That both theſe Sermons were preached upon publick Occaſions; and had, ſince the printing thereof, been handed about with more than ordinary Application.

One of theſe Books is intitled, *The Communication of Sin*, being a Sermon preached at the Aſſizes held at *Derby*, in *Auguſt* laſt: And becauſe the Doctor thought he had not ſaid enough againſt the Queen and her Government in the Sermon, he affixes a Dedication to it, wherein he affirms, That the Principles of our Church and Conſtitution are ſhamefully betrayed and run down; that both are perſecuted, on the one Side by rude and preſumptuous Inſults, and baſe undermining Treachery on the other; and that this Perſecution is carried on by aſſociated Malignants.

The other Sermon was preached at St. *Paul*'s, *London*, on the 5th of *November*, which is a Day ſet apart for a general Day of Thankſgiving, for two very great Deliverances vouchſafed to this Nation, by the Diſcovery of the Gun-powder-Plot, and the Arrival of his late Majeſty King *William*, to redeem us from Popiſh Tyranny and Arbitrary Power.

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My Lords, when ye come to hear this Sermon read, I am confident that it muſt appear very ſtrange to find that, when there were two ſuch memorable Occaſions for the Doctor to have ſet forth his Eloquence, in a Thankſgiving Sermon, he ſhould in a great Meaſure paſs by both the Buſineſſes of the Day, and entertain his Audience with a long Harangue of the deplorable Condition the Church was in; not ſo much from Papiſts, the avowed Enemies of the Church, as from her pretended Friends, as he calls them, the falſe Sons of the Church, who were crept into her Bowels, and had ſhewn themſelves to be perfidious Brethren, by defending Toleration and Liberty of Conſcience, and favouring the Diſſenters.

And to ſhew his little Liking of the great Work which was begun to be wrought on that Day, by the Arrival of his late Majeſty, the chief Turn of his Diſcourſe is to cry up Non-reſiſtance and Paſſive Obedience.

And to make it moſt evident, that what he ſaid of Non-reſiſtance was to caſt black and odious Colours upon the Revolution, he lays down a general Poſition, *That it was not lawful, upon any Pretence whatſoever, to make Reſiſtance to the Supreme Power*; which Supreme Power, by other Paſſages, he explains to be the Regal Power.

And being apprehenſive that every one that heard him talking in that Manner againſt Reſiſtance, would ſee plainly he was cenſuring and condemning the Means that brought about the Revolution, and being deſirous to caſt as heavy Reflections as he could upon the Memory of King *William*; he aſſerts, that the Prince of *Orange*, in his Declaration, utterly diſclaimed all Manner of Reſiſtance.

My Lords, every Body knows, that knows any Thing of the Revolution, That the Prince of *Orange* came over hither with an armed Force; and that in ſeveral Paragraphs of his Declaration, (the Doctor ſpeaks of) *His late Majeſty invites and requires all Peers of the Realm, both Spiritual and Temporal Lords, all Gentlemen, Citizens, and other Commoners, to come in and aſſiſt him, in order to the executing that Deſign he had then undertook, againſt all that ſhould endeavour to oppoſe him.*

Therefore it muſt be accounted very ridiculous for the Doctor to advance ſuch a Poſition, if he had no further Meaning in it, than to give an Account of the Prince of *Orange*'s Deſign in coming over here into *England*.

And this will make it neceſſary for your Lordſhips to conſider what is the true Meaning of this Aſſertion: Is it not plainly to make the Prince of *Orange* ſay one Thing, and at the ſame Time do directly another? And can this be done with any other Deſign than to aſperſe the Memory of the late King *William*?

Then as to his Diſcourſe concerning Paſſive Obedience and Non-reſiſtance, in ſuch Latitude as is there mentioned, what could it tend to, but to caſt Reflections upon that Reſiſtance which

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which was the Means that brought about the Revolution?

For was there any Occaſion at that Time to be ſo earneſt to cry down Reſiſtance, and preach up Paſſive Obedience?

Can any one pretend to ſay there were any Symptoms of Diſcontent throughout the Nation, in any Parts thereof?

No: To our Comfort be it ſpoken, no Reign, no Age, no Hiſtory can give a better Account of the good Diſpoſitions of the People to their Sovereign. Therefore, ſince the preaching theſe Doctrines was needleſs, it does ſavour of ſome wicked Deſign to be talking ſo unſeaſonably of this Subject.

If what the Doctor very frequently aſſerts in this Sermon be true, *That all are falſe Sons of the Church who aſſiſted in bringing about the Revolution, or that joined in the Oppoſition that was made to the Encroachments which were begun by evil Miniſters, in the Reign of King* James II. *againſt our Religion and Liberties*; let the Doctor a little conſider how far his Character of a falſe Brother may be carried.

Every Body knows, that lived in thoſe Days, that the Body of the Clergy of the Church of *England*, made a noble Stand againſt the Encroachments which were then making, and appeared as active as any of the Laity.

And was it not by their Writings, Preaching, and Example, that the Nobility and Gentry were animated to maintain and defend their Rights, Religion, and Liberties? And as an undoubted Monument, that this was the Senſe of the whole Kingdom at that Time of the Revolution, it is entered in the Journal of the Houſe of Commons on the Firſt of *February*, 1688,

That the Unanimous Thanks of the Houſe was given, nemine contradicente, *to the Clergy of the Church of* England, *for the great Services they had done their Religion and Country, by the Oppoſition they had made to the Execution of the Eccleſiaſtical Commiſſion, and their refuſing to read the King's Declaration for a Toleration, which was then founded upon the Diſpenſing Power.*

And how did the Archbiſhops receive the Meſſage, that was ſent them upon this Occaſion, that they might communicate that Reſolution to the Clergy in their reſpective Dioceſes?

Our Journal tells us, That Mr. *Leveſon Gower* the next Day acquainted the Houſe of Commons, that he had attended the two Archbiſhops according to Order, with the Thanks of the Houſe; and that Archbiſhop *Sancroft*, and the then Archbiſhop of *York*, returned their Thanks to the Commons for themſelves, and in Behalf of all the Clergy, for their favourable Vote.

Your Lordſhips ſee, the Commons were then happy enough to be thought favourable to the Clergy of the Church of *England*; and yet thoſe very Commons were the Men who paſſed the Toleration-Act, for exempting Proteſtant Diſſenters from the Penalties of certain Laws, as one of the moſt neceſſary Acts for the Good of the Kingdom.

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And were they not encouraged to go about that charitable Work by the Petition of the ſeven Biſhops, preſented to King *James*; wherein they acquainted him, *That it was not for want of a due Tenderneſs to Diſſenters, which made them refuſe reading his Declaration for Toleration to Diſſenters; in Relation to whom they were willing to come to ſuch a Temper as ſhould be thought fit, when the ſame came to be conſidered in Parliament.*

But now the ſame hath been conſidered in Parliament, and the Toleration hath been ſettled and eſtabliſhed by the Legiſlative Authority of the Kingdom, and hath been ratified and approved of in this Reign, by Her Majeſty and both Houſes of Parliament; Dr. *Sacheverell*, belike, diſapproves of it, and is pleaſed to tell us, in a moſt extraordinary Manner, *That a Man muſt be very weak, or ſomething worſe, that thinks or pretends the Diſſenters are to be gained by any other Grants and Indulgences, than giving up our whole Conſtitution: And he that recedes the leaſt Tittle from it, to ſatisfy and ingratiate with theſe clamorous, inſatiable, Church-devouring Malignants, knows not what Spirit they are of.*

After ſuch an ample Declaration of his Opinion, what fatal Conſequences will attend the granting Indulgences to Diſſenters, can the Doctor imagine, that his ſaying, in his Anſwer to the Articles, *That he intends not to caſt the leaſt invidious Reflection upon that Indulgence the Government has condeſcended to give them*, will take off the hard Cenſures he hath paſſed upon Diſſenters?

And, my Lords, if an Archbiſhop, who hath been dead almoſt a hundred and twenty Years, cannot be permitted to reſt quiet in his Grave, but muſt have foul Aſperſions caſt upon his Memory, as being a falſe Son, and a perfidious Prelate of the Church, for interceding (as Dr. *Sacheverell* ſays) with Queen *Elizabeth* for the Diſſenters in thoſe Days; what muſt the preſent Archbiſhops and Biſhops of our Church expect from Dr. *Henry Sacheverell*, if they do not thunder out their Eccleſiaſtical Anathema's againſt Diſſenters, as often as the Doctor ſhall think there is Occaſion for them?

My Lords, I perceive the Doctor hopes to ſalve all he hath ſaid againſt Toleration to Diſſenters, by a nice Diſtinction he hath hit upon, between an Indulgence and a Toleration.

Therefore he tells your Lordſhips, *That upon the moſt diligent Enquiry, he hath not been able to inform himſelf that a Toleration hath been granted by Law.*

Can the Doctor pretend to ſay, That this Word Toleration has never been made uſe of, to expreſs the Religious Liberty and Indulgence that is granted and allowed to Diſſenters? If we wanted Authorities to juſtify the Uſe of the Word, after the Doctor has made uſe of it in the ſame Senſe over and over, in many Paſſages in his Sermon, as will be taken Notice of by the Gentlemen that are to make good the ſecond Article; the Doctor might be put in Mind that Her Majeſty, in her Speech from the Throne, on the 17th of *December*, 1705,

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1705, hath been pleaſed to declare, *That ſhe will inviolably maintain Toleration.*

My Lords, as the Time was moſt unſeaſonable for the Preaching ſuch Doctrines as theſe, ſo the Place was very improper for a Lecture of Politicks: For your Lordſhips do perceive this latter Sermon, which was preached on the Fifth of *November* laſt, was preached in the great Metropolis of this Kingdom, before the Lord Mayor, Aldermen, and Citizens of *London*; from whoſe ſteady Loyalty to Her Majeſty, and firm Affections to the Revolution, ſuch vaſt Sums have contributed, for carrying on this long War againſt *France*, which hath proved ſo fatal to the *French* King, and other Enemies of this Kingdom.

And what more likely to give a fatal Wound to the Publick Credit at this Time, than ſuch a Doctrine, which tends to the Overthrow of all the Acts of Parliament which have been made in Support of this Conſtitution?

And how ſtrange an Attempt was it in the Doctor to preach againſt the Revolution, and this Government, before thoſe Citizens, who owe the Reſtoration of their Charters, and all their Franchiſes and Immunities to it!

But, to do Juſtice to the Doctor, he, in his Anſwer, denies he hath ſaid any Thing of the Means which brought about the Revolution.

And, if your Lordſhips can believe him, he ſays, *He has endeavoured to vindicate the Revolution from the black and odious Colours, the Enemies of the Revolution would throw both upon that and his late Majeſty.*

To what End and Purpoſe then are theſe Doctrines preached, with ſo much Vehemence at this Time, unleſs it be to reflect backwards upon what was done at the Time of the Revolution?

There is certainly no Occaſion to preach Non-Reſiſtance to Her Majeſty's loyal and dutiful Subjects, who have never ſhewn the leaſt Inclination to give Diſturbances to this preſent Government.

Was there ever known a Time, in which there was ſo univerſal an Agreement, in all Ranks and Degrees amongſt us? Does not every one almoſt ſtrive to ſhew their Zeal and Affection for Her Majeſty and Her Government? If there be any that are leſs quiet than their Neighbours, we ſhall find them amongſt the Friends of Dr. *Sacheverell*, who are profeſſedly no Friends to the Revolution. Nothing is more certain, than that all that are not ſatisfied with what was done at the Time of the Revolution, muſt be Enemies to the preſent Eſtabliſhment: And it is from this Source, all theſe Declamations againſt Men of Character and Station, both in Church and State, do proceed.

But I would have the Doctor conſider, that we have Laws to puniſh Spreaders of falſe News and horrible Stories of the great Men and great Officers of the Kingdom: And it is to put a Stop to theſe malicious Practices now on Foot, that this *Delinquent* is now brought to this Bar.

When we ſhall have read our ſeveral Proofs, which will juſtify every Particular charged on the Doctor in the Articles of Impeachment,

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The Sermon read in Evidence.

Then the Dedication before the *Derby* Sermon was read, and the Sermon preached at St. *Paul*'s, with the Dedication to the Lord Mayor, Sir *Samuel Garrard*; after which, the Court adjourned to the next Day.

The Arguments of the Managers on the firſt Article.

On *Tueſday* the 28th of *February*, the Managers for the Commons, Sir *Joſeph Jekyll*, Mr. Sollicitor *Eyre*, Sir *John Holland*, Mr. *Walpole*, Sir *John Hawles*, and Mr. *Stanhope*, proceeded to maintain the firſt Article; *viz. That the Doctor did ſuggeſt and maintain, that the neceſſary Means uſed to bring about the Revolution, were odious and unjuſtifiable: And that to impute Reſiſtance to the Revolution, was to caſt black and odious Colours on his late Majeſty, and the Revolution*, &c.

Sir J. Jekyll.

Sir *Joſeph Jekyll* among other Things, ſaid, That it was far from the Intention of the Commons, to ſtate the Bounds of the Subjects Submiſſion; what the Law was wiſely ſilent in, the Commons deſired to be ſilent in too: Nor ſhould they put any Caſe of a juſtifiable Reſiſtance, but that of the Revolution only; and to make out the Juſtice of that, laid it down for a Maxim, *That as the Law is the only Meaſure of the Prince's Authority and the People's Subjection; ſo that Law derives its Being and Efficacy from common Conſent.*

Religion had nothing to do to extend the Authority of the Prince, or the Submiſſion of the Subject; but only ſecured the legal Authority of the one, and enforced the due Submiſſion of the other, from the Conſideration of higher Rewards and heavier Puniſhments.--- That as the Doctrine of unlimited Non-Reſiſtance, was implicitly renounced by the whole Nation at the Revolution, ſo had that Renunciation been expreſſed and confirmed by ſeveral Acts of Parliament ſince: And in the Prayers appointed for the Fifth of *November*, *We thanked God for His late Majeſty's ſafe Arrival; and making all Oppoſition fall before him, till he became our King and Governor:* Notwithſtanding all which, Dr. *Sacheverell* had condemned the Reſiſtance, by which that Deliverance was wrought; and knowing that there was Reſiſtance uſed at the Revolution, and that the late King and Parliament had avowed that Reſiſtance; yet aſſerted, That thoſe who ſay, There was any Reſiſtance in it, caſt black and odious Colours on the late King and the Revolution; conſequently, he had condemned the Reſiſtance uſed to bring about the Revolution, which was the Charge contained in the firſt Article.

Mr. Solicitor.

Mr. Solicitor then cited ſeveral Paſſages out of the Sermon preached at St. *Paul*'s, to prove the firſt Article; and obſerved, that the Doctor's Argument run thus: All Reſiſtance is utterly illegal; the King diſclaimed the leaſt Imputation of Reſiſtance: The Parliament ſet the Crown upon his Head, upon no other Title than that of the Vacancy of the Throne, and burnt a Book, becauſe it aſſerted a Title by which Reſiſtance was ſuppoſed: And therefore to impute Reſiſtance to the Revolution, is to caſt black and odious Colours upon it.

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That the Doctor in his Anſwer, indeed, denied that he maintained the *neceſſary Means* uſed to bring about the Revolution, were odious and unjuſtifiable, or affirmed any thing concerning the neceſſary Means; and, it was true, the Words *neceſſary Means* were not uſed in his Sermon: But if Reſiſtance was neceſſary, and the Means by which the Revolution was effected, then he had aſſerted the Means to be odious and unjuſtifiable, though he had done it in other Terms.

And as to the late King's diſclaiming all Reſiſtance, it was an apparent Scandal on his late Majeſty, who was ſo far from diſclaiming Reſiſtance, that he declared he brought over ſufficient Forces to defend himſelf againſt evil Councellors, and encouraged the People to join with him.

That had the Doctor the Authority of the Church of *England*, and of the Common and Statute Law, to juſtify his Maxim of *The utter Illegality of Reſiſtance to the Supreme Power*, there had been no Colour to charge him with maintaining it: The Reſiſtance uſed at the Revolution, could not then be defended: But the Commons ſhould think themſelves ungrateful for that Deliverance, if they did not vindicate the Honour of the late King, and of thoſe illuſtrious Perſons, who, upon his Invitation, defended the Conſtitution at that Time by Reſiſtance, and declare, that this Reſiſtance was lawful, honourable, and juſt.

It could never be ſuppoſed, that the Laws were made to ſet up a deſpotick Power, to deſtroy themſelves, and to warrant the Subverſion of a Conſtitution they were deſigned to eſtabliſh: And it appeared by the Act declaring the Rights and Liberties of the Subjects, That at the Time of the Revolution, there was a total Subverſion of the Conſtitution in Church and State; which was a Caſe the Laws of *England* could never provide for, or have in View; and the ſame Anſwer might be applied to the general Doctrine of the Church, expreſſed in her Homilies.

Sir John Holland.

Sir *John Holland*, in Maintenance of the firſt Article, obſerved, That it was plain, there was a Reſiſtance at the Revolution; If the taking up Arms in moſt of the Counties of *England*, if the Deſertion of King *James*'s own Troops to an invading Prince, and the turning their Arms againſt their Sovereign were Reſiſtance. And if Subjects were obliged to an abſolute unconditional Obedience, then the Convention of the States, the Settlement and Entail of the Crown by them, and the Settlement of the Proteſtant Succeſſion, in Purſuance of that Reſiſtance, was unlawful and void.

The Commons did not plead for a licentious Reſiſtance, or abet humourſome factious Arms: They acknowledged theſe to be Rebellions. But they maintained, that the Reſiſtance at the Revolution, was lawful and juſt, from the Neceſſity of it. They agreed alſo, that the Laws concerning Obedience, were very expreſs and poſitive, and the Homilies and Fathers of the Church, both dead and living, alſo expreſſed our Duty in general Terms; but it did not follow from thence, there could be no Exceptions to theſe general Rules.

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That the Clergy at the Revolution, were ſo far from maintaining the Unlawfulneſs of Reſiſtance, that the true diſtinguiſhing Characteriſtick of a Church-of-*England*-Man, then was the wiſhing that Reſiſtance Succeſs: And yet the Doctor made this Exception, the Inſtance of an unjuſt Reſiſtance.

Mr. Walpole.

Mr. *Walpole*, among other Things, ſaid, He was very ſenſible of the Difficulty and Nicety that attended ſpeaking to this Point; for while a loyal Subject, and a faithful Servant of the beſt of Queen's, was ſpeaking in Defence of the neceſſary and commendable Reſiſtance uſed at the Revolution, his Arguments might be miſconſtrued and miſrepreſented, as maintaining Antimonarchical Schemes.

But to plead for that Reſiſtance which was concerned in this Debate, was to aſſert and maintain the very Being of the preſent Government: And to aſſert Non-Reſiſtance in that boundleſs and unlimited Senſe, Dr. *Sacheverell* preſumed to aſſert it, was to ſap and undermine the very Foundations of our Government.

If the general Poſition, laid down in the Sermon, of the utter Illegality of Reſiſtance upon any Pretence whatſoever, was ſtrictly true, then the aſſuming and exerciſing a Power of diſpenſing with the Laws; the Commitment and Proſecution of the Biſhops, the erecting a High Commiſſion Court, the levying Money by Pretence of Prerogative, the raiſing and keeping a Standing Army without Conſent of Parliament, the violating the Freedom of Elections of Members to ſerve in Parliament, and all the Grievances enumerated in the Bill of Rights, were all meer Pretences, and not ſufficient to juſtify what was done in Defence of the undoubted Rights and Liberties of the People at the Revolution; and which were ſince ratified and confirmed by ſeveral Acts of Parliament.

Reſiſtance, indeed, was no where enacted to be legal, but ſubjected to the greateſt Penalties, by all the Laws in Being; nor ought it to be deſcribed or affirmed to be excuſable, by any poſitive Law; or upon what Occaſions it may be exerciſed, it ought never to be thought of, but when an utter Subverſion of the Laws threatened the whole Frame of the Conſtitution, and no Redreſs could otherwiſe be hoped for. ---- But becauſe Men, out of Folly and Wantonneſs, might not commit Treaſon, or make their own Diſcontents, ill Principles, or diſguiſed Affections to another Intereſt, a Pretence to reſiſt the Supreme Power: Would it follow from thence, that the utmoſt Neceſſity ought not to ingage a Nation in its own Defence for the Preſervation of the whole? Or, on the other Side, becauſe the greateſt and moſt inexpreſſible Emergencies, did ſufficiently juſtify and warrant the Reſiſtance at the Revolution; would it be a Conſequence therefore, that, upon every ſlight Occaſion, the Laws that guarded againſt Treaſon ſhould be of no Effect? No; he hoped their Lordſhips juſt Judgment in this Caſe would convince the World, that every ſeditious, diſcontented, hot headed, ungiſted, unedifying Preacher, (the Doctor

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Doctor would pardon him for uſing one String of his Epithets) who had no Hopes of diſtinguiſhing himſelf in the World, but by a matchleſs Indiſcretion, ſhould not advance with Impunity, Doctrines deſtructive of the Peace and Quiet of Her Majeſty's Government and the Proteſtant Succeſſion, and prepare the Minds of the People for an Alteration, by giving them ill Impreſſions of the preſent Eſtabliſhment and Adminiſtration.

If Reſiſtance was illegal, on any Pretence whatſoever; If it was a Sin, which unrepented of, by the Doctrine of the Church of *England*, carried ſure and certain Damnation, without making all poſſible Reſtitution; he begged their Lordſhips to conſider what a Duty was here preſſed, on the Peril of Damnation, upon every Man's Conſcience that knew or believed there was Reſiſtance in the Revolution, and was conſcious to himſelf of being any ways aſſiſting or conſenting to this damnable Sin; and what muſt be the Conſequence, if theſe Doctrines, without any Reſerve or Exception, were preached throughout the Kingdom with Impunity. All which he hoped was ſufficient to ſatisfy their Lordſhips, that Dr. *Sacheverell* was guilty of the Charge exhibited againſt him in the firſt Article; and from their Lordſhips Juſtice, the Commons hoped his Puniſhment would be adequate to the Heinouſneſs of his Offence.

Sir John Hawles.

Sir *John Hawles*, in Maintenance of the firſt Article, ſhewed, that the *Roman* Emperors, under whom our Saviour and the Apoſtles lived, were generally Uſurpers; and yet, when they were poſſeſſed of Sovereign Power, the Apoſtles taught, that they ought to be obeyed: The ſame he held of ſuch of our Kings as had uſurped the Throne.

He further ſuggeſted, that Allegiance was as much due to an Uſurper, as to a lawful Prince: Or in other Words, that every Man, that could find Means to aſcend the Throne, became a lawful Sovereign the Moment he poſſeſſed himſelf of it, and had depoſed his Predeceſſor. And he was of Opinion, That the Doctor's maintaining the Doctrine of Non-Reſiſtance was High Treaſon; though the Commons had been ſo merciful as to impeach him only of High Crimes and Miſdemeanors.

Mr. Stanhope.

Mr. *Stanhope*, in Maintenance of the firſt Article, ſaid, That thoſe who aſſerted, in general Terms, the abſolute Illegality of Reſiſtance, muſt do it with a Deſign to overthrow Her Majeſty's Title and Government; ſince, at the ſame Time they skreened themſelves under the Notion of profeſſing abſolute Paſſive Obedience to the Supreme Power, they could not conceal, that the real Object of this darling Doctrine, was a Prince on the other Side the Water; they could not otherwiſe be conſiſtent with themſelves: For in the ſame Diſcourſe to preach Paſſive and Unlimited Obedience to Magiſtrates, and to revile and defame Magiſtrates; to preach Non-Reſiſtance on any Pretence, and to encourage Sedition, were ſuch Contradictions as could no otherwiſe be reconciled, than by concluding, That, however they were pleaſed to colour and diſguiſe their Diſcourſes, their true End was to alienate the Peoples Affections from their preſent Governors: To inſinuate, that the Revolution itſelf was an Uſurpation: That whatever had been built on that Foundation was wrong; and to repreſent thoſe who had a Hand in it as Rebels and Traitors.

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That it was not material, what the Opinions of ſome Divines have been: It was ſufficiently known what the Practice of the Church of *England* had been, when ſhe found herſelf oppreſſed; and appealed to the Practice of all Churches and Nations, how they behaved themſelves, when they found their Civil and Religious Rights invaded and oppreſſed by Tyranny.

He believed, *There was not that Government in the World but had its Beginning in Reſiſtance, or Compact:* And if Compact was admitted, there muſt likewiſe be admitted a Right to defend thoſe Rights accruing by Compact: That *Grotius*, in his Treatiſe *De Belli & Pacis*, L. 1. Cap. 4. Sect. 13. ſays, *If the King hath one Part of the Supreme Power, and the other Part is in the Senate, or People; when the King ſhall invade that Part that doth not belong to him, it ſhall be lawful to oppoſe a juſt Force to him, becauſe his Power doth not extend ſo far. Which Poſition I hold to be true, even though the Power of making War ſhould be veſted only in the King; which muſt be underſtood only to relate to Foreign War: For as for Home, it is impoſſible for any to have a Share in the Supreme Power, and not to have likewiſe a Right to defend that Share.*

This was exactly adapted to the Conſtitution of *England*; for that the Lords and Commons, and every Subject of *Great Britain*, had Rights, could not be denied: And to ſay, that when a Prince ſhall invade all theſe Rights, the whole Collective Body of the Nation has no Way to vindicate thoſe Rights, was ſo inconſiſtent, and contrary to Reaſon, that it was to be wondered it could ever enter into the Mind of Man.

That, at the Revolution, it was not thought a black and odious Crime, to take up Arms for Defence of the Conſtitution: Many of their Lordſhips, and the beſt Part of the Nation, were concerned in it; and it was with much Gratitude to the greateſt of Queens, they remembered how great a Share Her Majeſty had in the Revolution: And after this, for the Doctor to give the injurious Epithets of *Republicans*, of *Enemies, and Traitors to Church and State*, to thoſe who were concerned in that Reſiſtance, was not to be borne: It would have become him to have conſidered firſt, who were concerned, and who had a Share in it.

That the Principles broached by the Doctor well enough became profeſſed Jacobites; and had they confined themſelves to their own Conventicles, it might have been conſiſtent with the mildeſt Government to ſuffer them to enjoy the Toleration, how Deſtructive ſoever their Principles were. But when they ſhould vent their Treaſons abroad, and occaſionally conform and take the Oaths to the Government, the better to deſtroy it: When they ſhould abjure the pretended Prince of *Wales*, but not forget him; and when the Pulpit of our Metropolis ſhould be proſtituted

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ed and polluted by venting Sedition againſt the beſt of Queens, it was high Time for their Lordſhips to animadvert upon it.

And having made a Panegyrick on the then Miniſtry, who had, he ſaid, compelled the Enemy to ſue for Peace, and they were about to reap the Fruits of a long expenſive War; At ſuch a critical Juncture, when it behoved us more than ever to be united, then did this pious Son of the Church, this Loyal Subject, this Paſſive-Obedience Gentleman, endeavour to create groundleſs Miſtruſts and Jealouſies of the Adminiſtration.----He was, indeed, but *an inconſiderable Tool of a Party*, not worth the Trouble they had given their Lordſhips: But they looked upon it, that their Lordſhips Judgment in this Caſe would be giving a Sanction, which would determine what Doctrines of this Kind ſhould or ſhould not be preached; and they hoped their Lordſhips would inflict ſuch Puniſhment on this Offender, as ſhould deter others from committing the like Inſolence.

Sir Peter King's *Arguments on the 2d Art.*

Sir *Peter King* being aſſigned to maintain the ſecond Article, which charges the Doctor with aſſerting, *That the Toleration granted by Law was unreaſonable, and the Allowance of it unwarrantable*, &c. ſaid, It was true, that the Word Toleration was not mentioned in the Act, as the Doctor had obſerved in his Anſwer; but every Body knew, that the Exemption granted to Diſſenters by 1 *W. & M.* was called *The Toleration Act*; and the Doctor himſelf, in the 14th Page of his Sermon, had called it, The Toleration, where he ſaid, the Toleration was never intended to indulge and cheriſh ſuch Monſters and Vipers in our Boſom: And, again, in the 19th Page, where he ſays, The Diſſenters had advanced themſelves from the Religious Liberty their Sovereign had indulged them in, to claim a civil Right, and juſtle the Church out of her Eſtabliſhment, by hoiſting their Toleration into its Place.

And for the Doctor to affirm, That Hetrodoxy, or a different Opinion from any of the Articles of the Faith of our Church, almoſt neceſſarily infers Rebellion and High-Treaſon in the State; What could be a more direct breaking in upon, and diſavowing the Toleration, than this? Was not this to maintain the Toleration granted by Law to be unreaſonable, and the Allowance of it unwarrantable, when he knew every Denomination of Diſſenters differed from the Church in ſome of her Articles?

Another Reflection on the Toleration was in Page 16, where he ſays, What could not be gained by Comprehenſion and Toleration, muſt be brought about by Moderation and Occaſional Conformity: That is, what they could not do by open Violence, they will not fail by ſecret Treachery to accompliſh: *&c.*

Was not this calling the Toleration an open violence to the Church, and affirming that it was made with an Intent to deſtroy the Church, and maintaining that the Toleration was unreaſonable, *&c?*

And as to that Part of the 2d Article, which charges him with aſſerting, That he is a Falſe Brother, with relation to God, Religion, and the Church, who defends Toleration and Liberty of Conſcience; he cited the 8th Page of his Sermon, where the Doctor ſays, If to defend Toleration and Liberty of Conſcience, and under Pretence of Moderation, to excuſe the Separation, and lay the Fault upon the true Sons of the Church; If to court the Fanaticks in private, and hear them rail at and blaſpheme the Church, and, upon Occaſion, to juſtify the King's Murder; If to flatter both the Dead and the Living in their Vices, and tell the World, if they have Wit and Money they need no Repentance, and that only Fools and Beggars are damned; If theſe are the modiſh and faſhionable Criterions of a true Churchman, *God deliver us from all ſuch Falſe Brethren!*

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Here he made it one Mark of Falſe Brethren, *To defend Toleration and Liberty of Conſcience*, which was an evident Declaration againſt the Juſtice and Expediency of the Toleration.

That by his Reflection on Archbiſhop *Grindall*, he alſo deſigned to cenſure the Toleration; for he ſays, Page 20, Have they not, ever ſince their firſt unhappy Plantation in this Kingdom, by the Interceſſion of that falſe Son of the Church, Biſhop *Grindall*, always improved and roſe upon their Demands in the Permiſſion of the Government? Inſomuch, that Queen *Elizabeth*, who was deluded by that perfidious Prelate, to the Toleration of the *Genevian* Diſcipline, (the Diſcipline and Polity of the Diſſenters,) found it ſuch an headſtrong and encroaching Monſter that ſhe foreſaw it would endanger the Monarchy as well as the Hierarchy; and, like a Queen of true Reſolution and pious Zeal for both, pronounced, That ſuch were the reſtleſs Spirits of that factious People, that no Quiet was to be expected from them, till they were utterly ſuppreſſed: Which, like a prudent Princeſs, ſhe did by *wholeſome Severities*, that the Crown for many Years ſat eaſy and flouriſhing on her Head.

Here he called the Archbiſhop a falſe Son of the Church, and a perfidious Prelate, for perſuading the Queen, to grant a Toleration to Diſſenters: And what was this in Effect, but to declare the Parliament were in the Wrong in granting a Toleration to the Diſſenters? and that the Biſhops, who were for tolerating them, were neither Fathers or Sons of the Church, but corrupt and perfidious Prelates? And what could he do more to enflame the Government againſt the Diſſenters, than by recommending it as a noble Reſolution and pious Zeal in Queen *Elizabeth*, utterly to ſuppreſs the Diſſenters; and to recommend the Severities uſed in her Reign, becauſe they were wholeſome, and of happy Conſequence to that renowned Queen.

The laſt Charge in this Article was, The Doctor's aſſerting it to be the Duty of the Superior Paſtors, to thunder out their Eccleſiaſtical *Anathema's* againſt Perſons entitled to the Benefit of the Toleration, and inſolently defying any Power on Earth to reverſe thoſe Sentences: For which he referred to the 25th Page of the Sermon, and obſerved, that the Doctor

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Doctor did in his Anſwer own this Charge in Effect; for he there affirmed, That ſome Sentences pronounced by the Paſtors of the Church were ratified in Heaven: That ſome Perſons exempted from Puniſhment by the Laws of the Land, might yet, by the Laws of Chriſt, be liable to ſuch Sentences: And that Schiſm, or a cauſeleſs ſeparation from a Church, enjoining to ſinful Terms of Communion, was a Sin which expoſed the Perſon guilty of it to the Cenſures of the Church.--- Which was not only a weakening and cenſuring the Toleration, but a direct impugning the Queen's Supremacy, which by the Canon he was bound to maintain.

Lord Will Paulet.

The Lord *William Paulet* being aſſigned to aſſiſt in Maintenance of the 2d Article, ſaid, That the Nation had ſeen the good Effects of the Toleration, many of the Diſſenters ſince it paſſed having become ſincere Converts to the Church: That the Prejudices of the Diſſenters generally wore off, and the Numbers daily decreaſed; and yet the Doctor had ſet forth Toleration in the moſt odious Colours, and factiouſly endeavoured to ſtir up the People againſt it: He hoped, therefore, their Lordſhips would, by an Exemplary Puniſhment, ſuitable to ſo high a Crime, vindicate the Authority of Parliaments, and effectually diſcourage ſuch turbulent and ſeditious Preachers.

Mr. Cowper.

Mr. *Cowper* alſo was aſſigned to aſſiſt in maintaining the 2d Article; but there being nothing in his Argument but what Sir *Peter King* had already inſiſted on, it may very well be omitted here; though the Managers might think it proper at the Trial to enforce and inculcate the ſame Things over and over again, that they might make the deeper Impreſſion on the Audience.

Mr. Thompſon *on the* 3d *Art.*

The Court aſſembling again on *Wedneſday* the 1ſt of *March* Mr. *Thompſon* endeavoured to maintain the Charge in the 3d Article, *viz.* That the Doctor had aſſerted, in Contradiction to a Vote of both Houſes, *That the Church was in a Condition of great Peril and Adverſity under Her Majeſty's Adminiſtration*; and inſinuated, that the Members, who paſſed that Vote were themſelves conſpiring the Ruin of the Church, while they voted it out of Danger; alluding, by way of Parallel to that Aſſembly, who voted the Perſon of King *Charles* I. out of Danger, at the ſame Time they were conſpiring his Deſtruction.

To prove this Part of the Charge he quoted a Paſſage in the 5th Page of the Doctor's Sermon; where he ſays of the Church of *England*, Her Holy Communion has been rent and divided by factious and Schiſmatical Impoſtors, her pure Doctrine corrupted and defiled, her primitive Worſhip and Diſcipline prophaned and abuſed, her ſacred Orders denied and villified, her Prieſts and Profeſſors, like St. *Paul*, calumniated, miſrepreſented, and ridiculed: her Altars and Sacraments proſtituted to Hypocrites, Deiſts, Socinians, and Atheiſts; and this done, I wiſh I could not ſay, without Diſcouragement, I am ſure with Impunity, not only by our profeſſed Enemies, but, which is worſe, *by our pretended Friends and falſe Brethren.*

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Here the Manager, obſerved, That none could proſtitute Altars, Sacraments, *&c.* to Deiſts and Atheiſts, but thoſe of his own Order; thoſe who were to puniſh ſuch Offences among the Clergy, their Spiritual Superiors; and whether they were not Part of Her Majeſty's Adminiſtration, he ſubmitted to their Lordſhips.

Another Paſſage he cited for Proof of this Article, was in Page 18; where the Doctor ſays, Falſhood alway implies Treachery, an whether this was a Qualification for any one to be truſted, eſpecially with the *Guardianſhip of our Church and Crown*, let our Governors conſider: Whether this Reflection did not aim higher than the Adminiſtration, he ſubmitted to their Lordſhips.

The next Paſſage cited is in Page 20; where he ſays, and now are we under no Danger in theſe deplorable Circumſtances? Muſt we lull ourſelves under this ſad Repoſe, and in ſuch a ſtupid lethargick Security embrace our Ruin? When *Eliſha*, the great Prophet of God, was ſurrounded with an Hoſt of Enemies that ſought his Life, his blind Servant beheld not the Peril his Maſter was in, till his Eyes were opened by a Miracle, and he found himſelf in the Midſt of Horſes and Chariots of Fire: *I pray God we be out of Danger; but we may remember the King's Perſon was voted to be ſo, at the Time his Murderers were conſpiring his Death.*

That the Doctor would excuſe himſelf, indeed, in his Anſwer, by ſaying, that theſe deplorable Circumſtances proceeded from the Maturity of National Sins, *&c.* But it was plain he inſinuated and aſſerted, that this Danger was occaſioned by the Diſſention from the Church, which the Legiſlature apprehended to be no Danger to it, and therefore it did not become him to aſſert the contrary: And as to the Parallel between the Aſſembly who voted King *Charles* I. out of Danger, and the Members who voted the Church out of Danger, though the Doctor ſaid he meant no Reflection on the Members who paſſed that Vote, becauſe he never mentioned that Vote, and that they were not the ſame People who voted King *Charles* out of Danger; that conſpired his Ruin; the Doctor could not be ignorant, that it was in *November*, 1648, that King *Charles* was voted out of Danger; and how ſoon after the King's Trial and Death happened every Body knew; and though there might be ſome Alteration made in that Aſſembly, during that Time, the Perſons who conſpired his Deſtruction, were Part of that Aſſembly who voted him out of Danger; and it was not to be doubted but the Doctor intended his Alluſion in the ſame Manner.

And as to the Place of Scripture quoted by the Doctor, viz. *That the blind Servant beheld not the Peril his Maſter* Eliſha *was in, till his Eyes were opened by a Miracle, and he found himſelf in the midſt of Horſes and Chariots of Fire. Theſe Horſes and Chariots of Fire*, he obſerved, were not the Prophet's Enemies; ſo that he plainly perverted the Senſe of the Text, to make a ſtronger Impreſſion, and more effectually to delude the People.

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The laſt Paſſage he cited to maintain this Article, was in the laſt Page, where ſpeaking of the Danger of the Church, the Doctor quotes a Text out of *Lamentations*, viz. *Though ſhe lies bleeding of the Wounds ſhe received in the Houſe of her Friends*; this Text, he ſaid, he could not find, and therefore it ſeemed to be a Lamentation of the Doctor's own making. Then, he obſerves, the Doctor goes on, *Though the Ways of* Sion *may mourn for a Time, and her Gates be deſolate, her Prieſts ſigh, and ſhe in Bitterneſs, becauſe her Adverſaries be Chief, and her Enemies at preſent proſper; though among all her Lovers ſhe has few to comfort her, and many of her Friends have dealt treacherouſly with her, and are become her Enemies.*

Theſe Paſſages he ſaid, he mentioned only to ſhew that the Doctor, by the moſt pathetick Expreſſions of his own, mixed with theſe Texts of Scripture, endeavoured to repreſent the Church of *England* to be in the utmoſt Danger.

And as to the Doctor's Pretence, That the Vote concerning the Church's Danger could not concern him, becauſe it was made four Years ago; he ſhould have obſerved, that the Words were, *Whoſoever ſhall go about to inſinuate that the Church is in Danger, under Her Majeſty's Adminiſtration*; and therefore it muſt relate to any Time during Her Majeſty's Reign.

And that the Doctor (whoſe Education would not permit us to preſume he ſinned through Ignorance) ſhould take upon him, in his private Capacity, to contradict the Senſe of the whole Nation, and caſt ſuch Aſperſions on his Superiors, this immoderate Zeal could only be intended to animate a deluded People to the Execution of ſeditious Deſigns.

But the Commons were ſo well ſatisfied of their Lordſhips true Concern for the Preſervation of the Conſtitution, that they could not imagine they would ſuffer ſuch Attempts to paſs without condign Puniſhment.

Mr. Compton.

Mr. *Compton* alſo being aſſigned to maintain the third Article, ſaid, It had been one of the conſtant Artifices of the Enemies of the preſent happy Eſtabliſhment, to inſinuate that the Church was in a Condition of great Peril and Adverſity, in order to cover Deſigns they durſt not own; but this Aſſertion was never ſo boldly maintained, or with ſuch invidious and aggravating Circumſtances, as by the *Criminal* at their Lordſhip's Bar.---That, notwithſtanding the great Benefits the Church (of which he was a Member) reaped by the Revolution, he made that the very Period of Time when the Enemies of the Church firſt entertained Hopes of delivering her up to her worſt Adverſaries, and that, ever ſince, there had been a continued Series of Contrivances to ruin it: At the Revolution by open Violence, and now, under Her Majeſty's Adminiſtration, by ſecret Treachery: And, ſince neither the late nor the preſent Reign could eſcape his Invectives, it was evident for what Perſon he reſerved his Panegyricks.

That there were no Grounds to compare the dutiful Proceeding of the late Parliament, who had Her Majeſty's Thanks for their Unanimity and Zeal in her Service, to that Parliament with which he would maliciouſly draw a Parallel; nor was there the leaſt Reſemblance between Her Majeſty's glorious Reign, and that unfortunate Adminiſtration; unleſs it were, that then, as now, the Miniſters of the Church, though by their Function Meſſengers of Peace, ſet up to be Trumpeters of Sedition, and Incendiaries to Rebellion: But the Commons hoped, that even this Reſemblance would be determined, by their Lordſhips fixing ſuch an exemplary Puniſhment on this Offender, as ſhould deter others from endeavouring to diſtract the Kingdom, by groundleſs Diſtruſts and Jealouſies.

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Lord Coningsby.

Lord *Coningsby* being aſſigned alſo to maintain the third Article, obſerved, That the Doctor's Sermon, preached at St. *Paul*'s, from the Title Page to the Concluſion, was one malicious and ſeditious Aſſertion, that the Church of *England* was in the utmoſt Peril and Danger in the laſt Reign and the preſent; and was preached with an Intention to bring in the Pretender and Popery.

Mr. Dolben.

Mr. *Dolben*, in Maintenance of the third Article, obſerved, That the wicked Parallel of the Doctor's, might juſtly be turned upon him; for it was beyond a Suſpicion, that he, and all his Abettors, were conſpiring the Ruin and Deſtruction of the Church, while under the Diſguiſe of a falſe Zeal, they proſtituted her ſacred Name, to carry on dark Deſigns, fatal to Church and State: And that they might take up a much juſter Complaint, than that in the Doctor's Anſwer; namely, That hard was the Fate of that People, who, after twenty Years War, in Conjunction with ſo many great Allies, and with the Expence of ſo much Blood and Treaſure, had been contending againſt Tyranny and Oppreſſion, and which they might juſtly hope they had at laſt ſubdued; ſhould then ſee all *Europe* enjoy the Fruits of their Labours, and they themſelves only muſt be rendered incapable of the common Bleſſing; *betrayed at Home to a Condition of perpetual Bondage, by ſuch falſe Brethren as are at your Lordſhips Bar*; (where then ſtood ſome of the greateſt Divines in *England*, to countenance the Doctor and his Cauſe, *viz.* Dr. *Stanhope*, Dr. *Atterbury*, Dr. *Smalridge*, and Dr. *Moſs*): Whereupon Lord *Haverſham* moved the Lords to adjourn; and after their Return, the Lord Chancellor acquainted Mr. *Dolben*, That the Words *as are at your Lordſhips Bar*, needed Explanation: And Mr. *Dolben* anſwered, They had Relation only to the Priſoner at the Bar.

Mr. Serj. Parker *on the fourth Article.*

Mr. Serjeant *Parker* being aſſigned to make good the Charge in the fourth Article, *viz.* That the Doctor does falſly and maliciouſly ſuggeſt, That Her Majeſty's Adminiſtration, both in Eccleſiaſtical and Civil Affairs, tends to the Deſtruction of the Conſtitution: And that there are Men of Characters and Stations, both in Church and State, who are falſe Brethren, and do themſelves weaken, undermine, and betray, and do encourage, and put in the Power of others, who are profeſſed Enemies, to overturn and deſtroy the Conſtitution and Eſtabliſhment. And chargeth Her Majeſty, and thoſe in Authority under Her, with

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with a general Mal-Adminiſtration; and, as a publick Incendiary, he perſuades Her Majeſty's Subjects to keep up a Diſtinction of Factions and Parties, inſtils groundleſs Jealouſies, and foments deſtructive Diviſions among them, and excites and ſtirs them up to Arms and Violence: And that his ſaid ſeditious and malicious Suggeſtions may make the ſtronger Impreſſions upon the Minds of Her Majeſty's Subjects, he the ſaid *Henry Sacheverell* does wickedly wreſt and pervert divers Texts and Paſſages of Holy Scripture:

Obſerved, That the avowed Deſign of this Sermon, was to repreſent the extreme Perils and Diſtreſſes of theChurch and Conſtitution, from falſe Brethren that are *in* the Adminiſtration, and countenanced *by it*. And beginning with the ſecond Clauſe in this Article, *viz.*That he did falſly and maliciouſly ſuggeſt, *That there are Men of Characters and Stations in Church and State, who are falſe Brethren, and do weaken, undermine, and betray*, &c. To prove this, he cited p. 15, where the Doctor ſays, *That they weaken, undermine, and betray in themſelves, and encourage and put it in the Power of our profeſſed Enemies, to overturn and deſtroy the Conſtitution and Eſtabliſhment:* That this run through his whole Diſcourſe; and being affirmed of falſeBrethren in general, muſt be applied to every Sort of falſe Brother; and conſequently, if there were Men of Characters and Stations, whom he repreſented as falſe Brethren, then he affirmed of them, and had undertaken to prove, *That they did weaken, undermine, and betray the Conſtitution*, &c.

That p. 21, he ſaid, What a vaſt Scandal and Offence it muſt be, to ſee Men of Characters and Stations, thus ſhift and prevaricate with their Principles! What can unwary Perſons conclude from this Tergiverſation and Hypocriſy, but that all Religion is a State of Craft and Impoſture; that all Godlineſs is Gain; and that the Doctrines of the Church lie not ſo much in her Articles as her Honours and Revenues?

This was a full Charge of Falſe Brotherhood upon Perſons of Characters and Stations: And, according to theDeſcription he had given above of Falſe Brethren, that they did weaken,undermine, and betray, *&c. he had charged Men of Characters and Stations, with Weakening, Undermining, and Betraying*, &c.

That this was a general Arraignment of the Government: And, to put the Matter beyond all Doubt, he ſaid, in Scripture Words, Page 26, *That the Church's Adverſaries are Chief.*

As to the 3d Clauſe in this Article, That he charged Her Majeſty, and thoſe in Authority, with a general Mal-Adminiſtration, he cited Page 14, where he ſaid, Theſe Falſe Brethren in our Government do not ſingly, in private, ſpread their Poiſon, but (what is lamentable to be ſpoken) are ſuffered to combine into Bodies, and Seminaries wherein Atheiſm, Deiſm, Tritheiſm, Socinianiſm, with all the helliſh Principles of Fanaticiſm, Regicide, and Anarchy, are openly profeſſed and taught, to corrupt and debauch the Youth of the Nation, in all Parts of it, down to Poſterity, to the preſent Reproach and future Extirpation of our Laws and Religion.

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That, Page 23, a Falſe Brother is repreſented, as relinquiſhing his old Friends and Principles, and betraying his own Party, for the little ſordid Lucre of Place or Preferment. And that the Falſe Brethren he mentions, as put into Places, are put in by our Governors, he plainly ſuggeſts, Page 18, when he bids the Governors conſider, whether they are fit to be entruſted, eſpecially with the Guardianſhip of our Church and Crown.

As to the firſt Clauſe in this Article, which charges him with ſuggeſting that Her Majeſty's Adminiſtration inChurch and State tended to the Deſtruction of the Conſtitution: This he obſerved was made out by what had been ſaid of the other two. All thoſe fatal Miſchiefs complained of in them, aroſe from the Adminiſtration; which therefore plainly tended to the Deſtruction of the Conſtitution.

As to that Clauſe, which charged the Doctor as a publick Incendiary, with fomenting Factions and Parties, inſtilling groundleſs Fears and Jealouſies, *&c.* he ſaid, His Language of Forſaking old Friends and Principles, and betraying their Party, could have no otherDrift, but the keeping up Diſtinctions, and inſtilling groundleſs Jealouſies; and though he pretended to approve of an Indulgence to ſcrupulous Conſciences, in Reality he approved of none; ſince he did not admit any one to have a Conſcience truly ſcrupulous, who differed from him; but all ſuch were Falſe Brethren, and Villains, and to be ſtigmatized with all the other Names of Reproach he was ſo liberal of.

And as to his inciting her Majeſty's Subjects to Arms and Violence, this was moſt manifeſt from his ſpreading ſuch hideous Repreſentations of the Government, ſuch Outcries of the Church and true Religion being undermined, betrayed, and expoſed by thoſe in the Adminiſtration. This naturally tended toRebellion; and therefore at Common Law, *To bear the People in Hand, that the King's Government was erroneous, heretical, or unjuſt, whereby the Manner of the Government was arraigned or impeached, was held to be High Treaſon.* Roll's Rep. p. 89, 90.

The laſt Part of the Charge, his perverting Texts of Scripture, he proved from the Paſſage concerning *Eliſha*, mentioned before by Mr. *Thompſon*, Page 21. And whether he ſhould impute that Miſtake to the Doctor's Ignorance, and taking it upon Hearſay, or to his Reſolution knowingly to pervert it, he left to the Doctor's Choice.

And whereas the Doctor ſaid, he was, to his great Comfort, charged in this Article only with *ſuggeſting*, and not maintaining, that Her Majeſty's Adminiſtration tended to the Deſtruction of the Conſtitution, and hoped that bare Suggeſtions and Inſinuations ſhould not involve an *Engliſh* Subject in the Guilt and Puniſhment of High Crimes and Miſdemeanors.

He replied, That although this Charge had not been poſitive (as it was), it would be very extraordinary to imagine that, let a Man caſt never ſo many Scandals and Reproaches on the Government,

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Government, if it were done by Way of Suggeſtion and Inſinuation, and the Charges were expreſly maintained and avowed, there ſhould be no Crime in it, or not a high one: This was to ſay that Sedition and expoſing the Government were lawful, only the Manner was to be taken care of; that if you do it by Suggeſtions, which every Body will underſtand, and which will have their full Effect, yet you may be ſafe; for thoſe who come to judge you are not to underſtand you, though every Body elſe does.

That his Lamentation with which he concluded his Anſwer, *That hard was the Lot of the Miniſters of the Goſpel*, &c. was a moſt inſolent Reflection on the Honour and Juſtice of the Houſe of Commons, and was not inſerted by Way of Defence, but to inſinuate that Dr. *Sacheverell* had been proſecuted only for doing his Duty as a Clergyman.---But was the Story of *Eliſha*, as he told it, an honeſt Quotation? Were the Enemies that were Chief, and the Adverſaries that at preſent proſpered, no particular Perſons now in being? Was his Sermon an Exhortation to Piety and Virtue? Was it not manifeſtly a Trumpet of Rebellion? an expoſing the Faults of his Governors to make their Perſons hated?----The Commons had the greateſt Veneration for the Clergy of the Church of *England*, who were glorious through the whole Chriſtian World, for their Preaching and Writing, and their Steadineſs to the Proteſtant Religion in the utmoſt Danger, and, it was with Regret and Trouble, that they found themſelves obliged to bring before their Lordſhips Bar one of that Order: But when they conſidered Dr. *Sacheverell* diveſting himſelf of all the becoming Qualities proper for his Order, of all that peaceful, charitable Temper, Chriſtianity requires; and, with Rancour and Malice, branding all who differed from him (though through Ignorance) with the Titles of Hypocrites, Rebels, Traitors, Devils; reviling and expoſing them, conducting them to Hell, and leaving them there, *&c.* and doing this at a Time when all *Europe* was in War, and nothing could preſerve us from falling into the Hands of the Grand Enemy and Oppreſſor, but our Unanimity: That he ſhould labour to ſap the Eſtabliſhment, railing and declaiming againſt the Government, crying, To Arms; and blowing a Trumpet in *Sion*, to engage his Country in Seditions and Tumults, and overthrow the beſt Conſtitution, and betray the beſt Queen that ever made a People happy; and this with Scripture in his Mouth.----The Commons looked upon it, that he had ſevered himſelf from the reſt of the Clergy; and were in no Fear of being thought Diſcouragers of thoſe who preach Virtue and Piety, becauſe they proſecuted him who preached Sedition and Rebellion; or to have any Deſign to leſſen the Reſpect and Honour that is due to the Clergy, by bringing him to Puniſhment who diſgraced the Order.

Mr. Secretary *Boyle*, and Mr. Chancellor of the *Exchequer*, aſſiſted alſo in maintaining the Charge in the fourth Article; but there being nothing material in their Arguments that had not been touched on before, they are deſignedly omitted; and, indeed, if all the Invectives and ill Language were weeded out of this Trial, it would have come into a much narrower Compaſs.

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On *Thurſday* the 2d of *March*, the Court being met again, Mr. *Lechmere* obſerved, That the Commons had made their Impeachment good in every Part: And having given a ſhort Abſtract of the Managers Arguments, he added, That the Commons had gone through their Charge together, that their Lordſhips might have it entire; but they reſerved to themſelves the Liberty of Replying, and every other legal Advantage that ſhould ariſe to them in the Progreſs of their Impeachment. *The Managers conclude.*

The Court meeting again on *Friday* the 3d of *March*; and the Doctor's Counſel, being directed to proceed in his Defence ſaid, As to the Charge contained in the firſt Article, *viz.* His maintaining unlimited Non-Reſiſtance, the Doctor had indeed affirmed the utter Illegality of Reſiſtance to the Supreme Power, on any Pretence whatſoever: But this could never be interpreted as a Reflection on the neceſſary Means uſed to bring about the Revolution; for the Supreme Power was the Legiſlative Power, which was not then reſiſted, the Revolution taking Effect by the Lords and Commons concurring and aſſiſting in it. *The Defence made by the Doctor's Counſel.*

That, by the happy Conſtitution under which we live, a Subject of *England*, was not to be made Criminal, by a laboured Conſtruction of doubtful Words; or, when that would not ſerve, by reſorting to his Meaning. That it had been Reſolved by their Lordſhips, in Sir *Samuel Barnardiſton*'s Caſe, That Inuendo's, or ſuppoſed or forced Conſtructions ought not to be allowed; and if there were any Doubt or Uncertainty in the Doctor's Expreſſions, they hoped the moſt favourable Conſtruction would be put upon them.

But the main Objection they obſerved was, That the Doctor's Aſſertion of the Illegality of Reſiſtance muſt neceſſarily be underſtood of the Executive Power: If it be utterly unlawful to Reſiſt in any Caſe, then it was ſo at the Revolution; and from thence the Conſequence was drawn, That the Doctor was guilty of maintaining, *That the neceſſary Means uſed to bring about the Revolution were odious and unjuſtifiable.* To this they anſwered, That the Doctor had not, in any Part of his Sermon, applied this general Aſſertion to the Revolution; and 'twas one Thing expreſly to affirm the Revolution was ſuch a Caſe as ought not to be excepted out of the General Rule; and another Thing not to make the Exception: That extraordinary Caſes, Caſes of Neceſſity were always implied, though not expreſſed in the General Rule: That the General Rule ought always to be preſſed, but the Exceptions were never to be particularly ſtated. To point out every ſuch Caſe before-hand, was as impoſſible, as it was for a Man in his Senſes not to perceive plainly when ſuch a Caſe happens.

That the ſame Apoſtle, who enjoined Obedience and Non-Reſiſtance to the Higher Powers, commanded alſo Servants to obey their Maſters, and Children to obey their Parents

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in all Things. Notwithſtanding which general Precepts, many Caſes might happen wherein it might be not only unfit, but ſinful, for Servants to obey their Maſters, or Children to obey their Parents; and yet the Apoſtle never thought it proper to ſtate or mention thoſe Caſes; but contented himſelf to preſs the Duty of Subjection in general, leaving ſuch Caſes (when they happened) to juſtify themſelves.

That the Doctor's Aſſertion of the Illegality of Reſiſtance to the ſupreme Power, on any Pretence whatſoever, in general Terms, without expreſſing any Exception, was alſo warranted by the Authority of the Church, and was agreeable to the Laws of *England:* That the Doctor was by Law obliged to read the Homilies, in which this Duty was preſſed in much ſtronger Terms, without any Limitation or Exception; and was it Criminal for a Man to preach that Doctrine which 'twas his Duty to read?

That had this ſlaviſh Doctrine of Non-Reſiſtance been firſt branded with its indelible Mark of Infamy, and the Right and indiſpenſible Duty of Reſiſtance plainly ſhewn; had all the ſlaviſh Notions of the Common Law diſperſed in our Law Books, which gave Countenance to this Doctrine of Non-Reſiſtance been firſt weeded out, and ſome few Acts of Parliament, entirely agreeable with this ſlaviſh Doctrine, firſt repealed; had the People been ſet right in the Notions of their Obedience, and the Miniſters of the Goſpel inſtructed by an Act of Parliament, what Doctrine they ought to preach, and what not, and the Doctor had afterwards erred, their Lordſhips might then have looked upon him as an obſtinate Offender.

But as this Doctrine of the Illegality of Reſiſtance on any Pretence whatſoever, was the Doctrine of the Church, it had alſo been confirmed by the Legiſlature, without making any particular Exception: And whatever Meaſures might have been taken by the People, in Caſes of the laſt Neceſſity, to preſerve their Liberties; yet in no Age could an Inſtance be given, no not in the Reigns of thoſe Princes who had been depoſed, That this Doctrine of the Right of Reſiſtance, was ever permitted to be aſſerted by any particular Perſon: But on the contrary, in the Reign of King *Edward* II. when an Act of Parliament paſſed for the Baniſhment of the two *Spencers*, the Reaſon of their Baniſhment is recited to be, for that they had affirmed and publiſhed in Writing, that Homage and Allegiance was due more by reaſon of the Crown, than by reaſon of the Perſon of the King; and that if the King did not demean himſelf according to Reaſon, in the Exerciſe of his Government, his Subjects might remove him: And ſince that Removal could not be by Courſe of Law, they might therefore remove him by Force. And my Lord *Coke* in his Reports, in *Calvin*'s Caſe, ſtiles the Opinion of the *Spencers*, a damned Opinion. Here many Acts of Parliament were recited, that condemned Reſiſtance, and particularly, the Act for the Attainder of the Regicides, wherein it is declared, That *by the undoubted and Fundamental Laws of this Kingdom, neither Peers of this Realm, nor the Commons, nor both together, in Parliament or out of Parliament; nor the People, collectively or repreſentatively, nor any other Perſons whatſoever, ever had, have, hath, or ought to have any coercive Power over the Kings of this Realm.* And by the 13th of *Car.* 2. *Seſſ.* 2. *cap.* 1. all Officers in Corporations are required to ſwear, That it is not lawful upon any Pretence, to take up Arms againſt the King. And by the 13 & 14 *Car.* 2. *cap.* 4. Several Officers and Eccleſiaſtical Perſons, are required to ſubſcribe the Truth of this Aſſertion: And though it might be objected, That this Oath was now diſpenſed with, the Act was not yet repealed; and if it was, the Propoſition was never the leſs true, becauſe it was not ſworn: If it was true when it was ſworn, the Propoſition was equally true before and after: And ſince that Oath had been taken by ſo many of the Peers and Commons, no Man would pretend to queſtion the Truth of the Propoſition.

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As to that Part of the Charge, that King *William* in his Declaration diſclaimed the leaſt Imputation of Reſiſtance; though the Doctor had ſpoken improperly, yet he had ſpoken innocently: For the Reſiſtance the Doctor mentions his late Majeſty to have diſclaimed, could have no ſuch Meaning as the Managers would put upon it: He was a Sovereign Prince, and might reſiſt when he pleaſed; and the Doctor had elſewhere ſhewn, he meant Conqueſt by Reſiſtance: And that the Words caſting black and odious Colours, were ſo far from referring to his late Majeſty's diſclaiming the Imputation of Reſiſtance, that they conclude the Sentence that went before it.

The Doctor's Counſel afterwards defended him againſt the Charge in the remaining three Articles, but the Doctor having given us an Abſtract of their Arguments himſelf in the following Speech, after his Counſel had concluded, I ſhall content my ſelf with giving that Speech entire, which is eſteemed one of the fineſt Pieces of Oratory we have in *Engliſh.*

The Defence made by the Doctor himſelf;

Dr. *SACHEVERELL.* My Lords, the Defence made by my Counſel has been ſo full and particular, and the Trial it ſelf drawn out into ſo great a Length, That I ſhould not add to your Lordſhips Trouble, by ſaying any Thing for my ſelf, did I not think that in ſuch a Cauſe as this (wherein the Doctrine of our Church, the Dignity of that Holy Order to which I belong, and even the common Intereſt of Chriſtianity it ſelf, are ſo nearly concerned) it becomes me not to be altogether ſilent.

For, my Lords, It has been owned by ſome of the Managers for the Honourable Houſe of Commons, that though I am the Perſon impeached, yet my Condemnation is not the Thing principally aimed at. I am it ſeems, *an inſignificant Tool of a Party*, not worth regarding; the avowed Deſign of my Impeachment is, by the Means of it to procure an eternal and indelible Brand of Infamy to be fixed, in a Parliamentary Way, on all thoſe who maintain the Doctrine of Non-Reſiſtance, and to have the Clergy directed what

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Doctrines they are to preach, and what not: And therefore, as inſignificant as I am in my ſelf, yet the Conſequences of my Trial (if rightly repreſented to your Lordſhips by ſome of thoſe Gentlemen) are of the higheſt Moment and Importance.

Since I am the unfortunate Occaſion of bringing theſe Matters in Judgment before your Lordſhips, it will behoove me, I think, after what has been pleaded in my Behalf by my Counſel learned in the Law, to ſay ſomewhat alſo for my ſelf, in Order to clear the Innocence of my Intentions, and remove that Load of Guilt and Infamy which may be laid upon me, ſhould your Lordſhips determine (as I truſt in God you will not) that the Articles of Impeachment exhibited, have been made good againſt me.

With your Lordſhips Permiſſion then, I ſhall lay before you ſome few General Remarks, which, in my humble Opinion, may be added to what my Counſel have already obſerved, concerning the Methods taken by the Managers for the Honourable Houſe of Commons, to prove and ſupport the Articles of their Charge: And ſhall then, with your Lordſhips Leave, ſay ſomewhat ſeverally to the Articles themſelves, which may ſerve to remind your Lordſhips of what my Counſel before offered more at large, and with greater Advantage.

My Lords, the Charge brought againſt me in theſe Articles, is of a very high and heinous Nature; and had it been as clearly made out, as it has been ſtrongly affirmed, it would juſtly have expoſed me to a very ſevere Sentence: But the more heinous the Charge is, the more evident and undeniable, I ſhould think, the Proof ought to be. And how, my Lords, has this Charge been ſupported in the ſeveral Articles of it? By plain, direct, and expreſs Paſſages, produced and read to your Lordſhips out of my Sermons; or by Intendments, unneceſſary Implications, and ſtrained Conſtructions? By laying entire Sentences before your Lordſhips, and relying upon what was manifeſtly contained in them; or by piecing broken Sentences, and conjoining diſtant and independent Paſſages, in order to make me ſpeak what I never thought of?

I am unacquainted, my Lords with the Methods of legal Proof, and little thought I ſhould have had this Occaſion of enquiring into them. But, as far as I am able to comprehend any Thing of this Nature, I ſhould think, that there cannot be a clearer Indication that I am not guilty of having aſſerted, what I am charged by the ſeveral Articles to have ſaid, than that ſo many Hours Learning and Eloquence have been employed in proving me to have ſaid it. Had I really affirmed thoſe Propoſitions for which I am accuſed, my Sermons being before your Lordſhips, the Places wherein ſuch Propoſitions were directly contained, might have been referred to, and read, with the ſame Eaſe as my Counſel referred to the Paſſages contained in the ſeveral Writings and Sermons of the Reverend Fathers, and other eminent Divines of our Church, wherein they taught the Doctrine of Non-Reſiſtance in the ſame Extent as I maintained it, or in Terms much ſtronger.

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Theſe Paſſages produced by my Counſel, were barely read to your Lordſhips: No Argument, no Colours were uſed, becauſe none were neceſſary, to prove what Propoſitions were laid down in thoſe Paſſages. Whereas, to prove me guilty of having aſſerted what is laid to my Charge, after my Sermons and Prefaces were read to your Lordſhips, much Art and Induſtry were uſed to perſuade your Lordſhips, that ſuch Aſſertions were really contained in them.

My Lords, When my Words were capable of two Senſes, the worſt and moſt invidious, though at the ſame Time the moſt ſtrained and unnatural Conſtruction, has been always made of them. Nay, when my Words were ſo plain and expreſs, that it was impoſſible to put any Criminal Gloſſes or Colours upon them, I have been accuſed of meaning the direct contrary to what I have ſaid: And when I preſſed the Duty of Allegiance to the Queen, your Lordſhips were told, that it was moſt certain I meant the Pretender.

To aggravate my Guilt, I have been accuſed, not only for what I am ſuppoſed to have ſaid, but for what I am allowed not to have ſaid; not only for what I have taken Notice of in my Sermons, but for what I have paſſed by unobſerved: I have been charged with Negative Crimes; as if what I omitted to ſay, had been omitted with Deſign, and my Silence it ſelf were Criminal.

Theſe, my Lords, are the Methods that have been made uſe of to prove me guilty of Crimes, which, if proved, might affect my Liberty and Fortune: No favourable Allowances have been made to a Miniſter of the Goſpel, diſcharging the Duty of his Function, and rebuking Vice and Irreligion, with an honeſt and well-meant Zeal; but ſometimes perhaps carrying him into Expreſſions too open and unguarded. I could add, my Lords, if ſuch a Complaint might not be thought improper from one in my Circumſtances, that, in the Courſe of my Accuſation, I have been ſtiled a Criminal, and treated as ſuch by ſome of theſe Honourable Gentlemen, with a Degree of Scorn and Indignity, from which I hoped my Sacred Profeſſion, my preſent unhappy Condition, and a Regard to this ſolemn and awful Judicature, might have ſcreened me.

But, my Lords, I lay aſide all Complaints of this Nature, and with your Lordſhips Leave, ſhall proceed to make ſome few, ſhort Obſervations upon the ſeveral Branches of the Charge exhibited againſt me.

to the 1ſt Article;

I am charged, my Lords, in the firſt Article, with having maintained, That the neceſſary Means, uſed to bring about the late happy Revolution, were odious and unjuſtifiable; in Proof of which it has been urged, That I have in General Terms aſſerted, the utter Illegality of Reſiſtance to the Supreme Power, upon any Pretence whatſoever. My Lords, the Reſiſtance in that Paſſage by me condemned, is no where by me applied to the Revolution; nor is it applicable to the Caſe of the Revolution, the Supreme Power not being then reſiſted.

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My Lords, I neither expreſly applied my Doctrine of Non-Reſiſtance to the Caſe of the Revolution, nor had I the leaſt Thoughts of including the Revolution under my general Aſſertion. I expreſſed this Doctrine in the ſame general Terms in which I found it delivered by the Apoſtles of Chriſt, I taught it, as I had learnt it, from the Homilies of our Church, and as I was enjoined to teach it, by the Articles of our Religion: I uſed no other Language than what had been uſed by our firſt Reformers, by a continued Series of Right Reverend Prelates, and other celebrated Divines now with God, and by many of thoſe venerable Fathers before whom I ſtand, and what is perfectly agreeable to the Laws and Statutes of this Realm. I had little Reaſon to apprehend that I could ever have been accuſed by the Gentlemen of the Houſe of Commons to your Lordſhips as a Criminal, or as an Aſperſer of the Memory of the late King, for preaching this Doctrine; when others, who preached the ſame Doctrine; in the ſame Terms before their late Majeſties, before our preſent Gracious Sovereign, (whom I pray God long to preſerve!) before each Houſe of Parliament, before this very Houſe of Commons, have met with publick Approbation. But ſince it is my ſingular Misfortune to be accuſed, for what others have received Thanks, in ſome Inſtances conveyed to them by ſeveral of the Managers themſelves, I do with all humble Confidence rely upon your Lordſhip's Juſtice; not doubting but that the learned Judges, if thought neceſſary to be conſulted, will declare what I have in this Caſe aſſerted to be warranted by Law, and the Right Reverend the Biſhops will affirm it to be the Doctrine of the Goſpel.

The Doctrine I preached being the Doctrine of the Homilies of our Church, not expreſſed only in a few particular Paſſages of thoſe Homilies, but perfectly agreeable to the whole Tenor, the main Scope and Deſign of them; and thoſe Homilies being eſtabliſhed by the Thirty-Nine Articles, as containing godly and wholeſome Doctrine; and thoſe Articles being confirmed by the 13th of Queen *Elizabeth*; and that Statute being made perpetual and fundamental to our Conſtitution by the late Act of Union; I leave it to your Lordſhips to conſider, how far the Condemnation of me, on the Account of that Doctrine, may affect, and ſhake the preſent Frame of the *Britiſh* Conſtitution in Church and State, and tend to diſſolve the Union of the Two Kingdoms.

to the 2d Article;

My Lords, Upon the Second Article, I would humbly pray your Lordſhips to conſider, that I have no where in my Sermon ſhewn any the leaſt Diſlike of the Indulgence granted by Law to Diſſenters; that, on the contrary, I have declared my Approbation of it in the moſt expreſs Terms imaginable, which I beg Leave once more to repeat to your Lordſhips out of my Sermon preached at St. *Paul*'s. *I would not* (I there ſay) *be miſunderſtood, as if I intended to caſt the leaſt invidious Reflection upon that Indulgence, which the Government hath condeſcended to give them; which, I am ſure, all thoſe who wiſh well to our Church are ready to grant to Conſciences truly ſcrupulous; let them enjoy it in the full Limits the Law hath preſcribed.*

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My Lords, This then was, and ſtill is my ſincere Opinion; nor am I conſcious that I have uttered one Word inconſiſtent with it. I have indeed blamed, and perhaps with ſome Warmth and Earneſtneſs blamed, the Abuſes which Men of no Conſcience have made, of the legal Exemption granted to Conſciences truly ſcrupulous: Nor could I think that thoſe Reprehenſions of mine, would have drawn upon me the Diſpleaſure of any ſincere Chriſtian, which were levelled againſt Hypocrites, Socinians, Deiſts, and ſuch as, under the Umbrage of that Act, which permits Proteſtant Diſſenters, and thoſe only, to ſerve God, every Man in his own Way, think themſelves at Liberty to be of no Proteſtant Congregation, of no Religion at all. I will farther ingenuouſly own to your Lordſhips, that I had in my Eye ſome Abuſes made of that Act by the Diſſenters themſelves; who, I am told, do (both Paſtors and People) rarely obſerve the Qualifications preſcribed by that Act; and who erect Seminaries for educating Youth in Principles oppoſite to the Doctrine, Diſcipline and Worſhip of our Church: Whereas that Act was intended for the Eaſe of thoſe, whoſe Minds, through the unhappy Prejudices of Education, were already eſtranged from the Church; not, as I humbly conceive, to indulge Men in taking the moſt effectual Methods to propagate and perpetuate their Schiſm.

My Lords, of any Favours to Diſſenters granted, or intended by the Law, I have no where complained. Of Toleration, a Word unknown to our Laws, and implying, as I am informed, much more than our Lawgivers deſigned, if I have ſaid any Thing offenſive, I may, I hope, reaſonably preſume, that it will not be judged by your Lordſhips in any wiſe to reflect on that Act of Exemption, which I have ſpoken of in Terms, no ways, I think, misbecoming a good Subject, or betraying any Want of Chriſtian Moderation. Nor is there, my Lords, any Want of it, I conceive, in affirming that this Act, which relieves ſome Diſſenters from legal Puniſhments, to which they were before obnoxious, hath not any ways altered the Nature of Schiſm, or extinguiſhed the Obligations to Church-Communion; which is an Evangelical Duty, incumbent on all Chriſtians by the Rules of the Goſpel, antecedent to all ſecular Laws, and can by no human Power be diſpenſed with. If the Church of *England*, my Lords, impoſes no unlawful Terms of Communion, as ſhe certainly does not, then all Separatiſts from her Communion, will, notwithſtanding the Indulgence, continue to be guilty of Schiſm; The Conſequence of which Guilt may ſtill reſt upon their Souls, however it may ceaſe to affect their Bodies or Eſtates. For, as no human Law can render that lawful, which God hath forbidden, ſo neither can it make that void, which God hath commanded.

My Lords, I am accuſed under this Head, of maintaining, That it is the Duty of ſuperior Paſtors to thunder out their Eccleſiaſtical

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Anathema's againſt Perſons entitled to the Benefit of the Toleration: I hope it hath evidently appeared to your Lordſhips, that I advance no ſuch Poſition. Sure I am, that my Words do not in themſelves carry ſuch a Meaning, nor does the Connection of my Diſcourſe require that Senſe, or eaſily admit it. Schiſmaticks, my Lords, are not the only Perſons againſt whom Eccleſiaſtical Cenſures may be denounced; the Works of Darkneſs, which I referred to, as fit to be reproved, in that Part of my Sermon, where I ſpeak of theſe Cenſures, are of the ſame Kind with thoſe mentioned by the Apoſtle, whoſe Words I produced, all lewd and immoral Practices: Againſt theſe, my Lords, and againſt Hereſies and Blaſphemies, (a black Catalogue of which has been diſplayed before your Lordſhips) I thought the *Anathema's* of the Church would be well employed; ſuch *Anathema's*, I doubt not, my Lords, would be ratified in Heaven, and would therefore, by any Power on Earth, be irreverſible.

As to Archbiſhop *Grindall*, though I may ſeem to have uſed ſome undue Aſperity of Expreſſion concerning him, yet I charged him with nothing but what I had good Grounds for, from our Hiſtorians. It hath been made appear to your Lordſhips, that, on the Account of his Remiſſneſs in Church-Government, he lived and died under the High Diſpleaſure of Queen *Elizabeth*; and whether therefore he, or that Glorious Queen, ſhall bare the Blame of his Diſgrace and Sufferings, is with all Humility ſubmitted to your Lordſhips.

I hope, my Lords, I ſtand clear in your Opinions of the Charge advanced againſt me, in the two firſt Articles; and as my own Conſcience acquits, ſo I truſt your Lordſhips will acquit me, of whatever is laid to my Charge in the Third.

To the 3d Article.

My Lords, I neither have ſuggeſted, nor do in my Conſcience believe, that the Church is in the leaſt Peril or Adverſity from her Majeſty's Adminiſtration: So far am I from any ſuch Thoughts, that I am entirely ſatisfied of Her being a moſt affectionate Nurſing-Mother to it. But I hope I may ſay, without Offence, that the Church may be in Peril from other Cauſes, without any Reflection upon Her Majeſty's Government, or any Contradiction to Her Royal Proclamation, and the Reſolution of both Houſes of Parliament, four Years ago. If the Church be in Danger, when the Chriſtian Religion is evidently ſo, I hope it will be thought no Crime to ſay, It has ſcarce ever been in greater Danger than it is now, ſince Chriſt had a Church upon Earth. For, beſides that Deluge of Profaneneſs and Immorality, which overſpreads the whole Kingdom; beſides the Variety and growing Strength of thoſe Schiſms which weaken and divide us, and of thoſe Heterodox Opinions and damnable Hereſies which are daily publiſhed and propagated among us; I verily believe, that never were the Miniſters of Chriſt ſo abuſed and vilified; never was the Divine Authority of the Holy Scriptures ſo arraigned and ridiculed; never was Infidelity and Atheiſm it ſelf ſo impudent and barefaced; never was ſuch horrid Blaſphemies printed in any Chriſtian State, from the Foundation of Chriſtianity to this Day.

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Out of the many Inſtances of this Kind, which, being ready at Hand, I could have produced to your Lordſhips, I have ſelected a few only; but thoſe ſuch, as I am perſuaded, your Lordſhips could not hear without Horror and Aſtoniſhment. Pardon me, my Lords, if my Apprehenſion of the ſad Conſequences, we may expect from ſuch crying Abominations, have forced from me ſome Expreſſions, which, upon a leſs Occaſion, might ſeem too harſh and vehement. A Man that dreads no Danger from ſuch unparallelled Iniquities, that do as it were call down God's ſevereſt Judgments upon that poor Church and Nation, wherein they are openly and daringly committed, muſt be dead in his Love for his Country and Religion. If I have diſcloſed ſuch a frightful and deteſtable Scene of Impiety, which by reaſon of your Lordſhips high Stations and great Employments, might poſſibly lie undiſcovered to your Sight before; I ſhall think my ſelf happy, whatever ſhall befall me, if I may by God's Grace become the mean Inſtrument of putting a Stop to that Overflowing of Ungodlineſs and Blaſphemy, which as yet no Laws, no Proclamations, how well ſoever deſigned, and how often ſoever repeated, have been able to reſtrain.

Nor ought I, my Lords, to forget, though it was forgotten by the honourable Managers, another Ground of Danger ariſing to this Church, from the Attempts of Popiſh Emiſſaries, by me mentioned, I hope without the leaſt Offence, in my Sermon at St. *Paul's*; where I ſay, It were highly to be wiſhed, that thoſe excellent Laws, made for the Defence and Security of the Church, were at preſent put ſtrictly in Execution; for the Roman Catholick Agents, and Miſſionaries, that ſwarm about this great City, as 'twere in Defiance and Contempt of them, were never more buſy in making Proſelytes to their Superſtition and Idolatry, and perverting and debauching Her Majeſty's Subjects in every Corner of our Streets. I have not, my Lords, been called upon to prove the Truth of this Paſſage, nor has it been reckoned among the falſe Inſinuations I have made, *That the Church is in Danger.* I pray God the Church may be in *no* Danger, upon any of theſe Accounts! Her Majeſty, your Lordſhips, and the Commons, have indeed provided againſt theſe Dangers by wholeſome Laws, and I hope I did not exceed the Limits of my Function, when, being called to preach before Magiſtrates, I exhorted them to prevent theſe Dangers, by putting thoſe Laws ſtrictly in Execution.

Juſt had been the Indignation of the Honourable Houſe of Commons, juſt would be your Lordſhips moſt ſevere Reſentments, if by any Parallel by me drawn, I had inſinuated that the Members of both Houſes, who paſſed the Vote concerning the ſafe and flouriſhing Condition of the Church, had been then conſpiring its Ruin. I have already purged my ſelf from this Imputation, by obſerving that the Parallel aſcribed to me, implies, that they who voted King *Charles* I. to be out of Danger, and thoſe who conſpired his Death,

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were the very ſame Perſons, whereas it is certain they were not; for, my Lords, the Vote about the King's Safety, was paſſed by Lords and Commons an Year and half before his execrable Murther, which had been contrived by the Army, and was perpetrated by a pretended Ordinance of a ſmall Remnant of the Houſe of Commons (not a tenth Part of the whole), after the reſt of the Members had been impriſoned or ſecluded, and without the Concurrence of the Houſe of Peers, who totally rejected it. You have had, my Lords, a very different Repreſentation of this Fact made by one of the learned Managers: But this, my Lords, is the real Truth, as recited in the Act of Parliament for the Attainder of the King's Murtherers; and is an Evidence, that I could not poſſibly mean by any odious Parallel to inſinuate, that the Members of both Houſes, who paſſed the Vote concerning the Safety of the Church, were then conſpiring its Ruin.

to the 4th Article.

I humbly crave your Lordſhips Patience yet a little farther, whilſt I ſpeak what is alledged in the fourth Article, which charges me with many Crimes of a very high and flagrant Nature; none of which have been endeavoured to be proved upon me, otherwiſe than from ſuppoſed Suggeſtions, and undetermined Expreſſions; and I muſt ſtill, with your Lordſhips Leave, humbly inſiſt upon it, that where the Expreſſions are doubtful, there the favourable Senſe is always to be preferred.

After all that has been ſaid by the learned Managers for the Commons, What Miniſter of State, I beſeech your Lordſhips, have I been proved to reflect upon, directly or indirectly? Where, and how, do I, by any Suggeſtion, charge Her Majeſty, or thoſe in Authority under Her, with a general Mal-Adminiſtration? How do I perſuade Her Subjects to keep up a Diſtinction of Parties and Factions, while I reprove thoſe who divide us by knaviſh Diſtinctions, and while I perſuade my Fellow-Subjects to loſe and forget them? How is it poſſible, I ſhould ſtir up the People to Arms and Violence, when I am endeavouring to convince them of the utter Illegality of Reſiſtance upon any Pretence whatſoever? Theſe Things, my Lords, ſeem to be inconſiſtent, unleſs a Man may be thought a Rebel for recommending Loyalty, or ſeditious for preaching againſt Sedition.

I remember, indeed, at the Opening of this Charge againſt me, that one of the Managers for the Houſe of Commons, vouchſafed to offer his charitable Aſſiſtance towards reconciling this ſeeming Inconſiſtency; for he was pleaſed to ſuppoſe that, when I ſpake againſt reſiſting the Sovereign, I had not our Gracious Queen, but ſome other Perſon in View; and that I might therefore, agreeably to my Principles of Non-Reſiſtance, ſtir up the People to Arms and Violence againſt Her Sacred Majeſty. Your Lordſhips will once more pardon my Earneſtneſs, if I call God to Witneſs, that I utterly deteſt any ſuch traitorous Intention, and I ſhould, in my own Opinion, be unworthy of the Name of a Chriſtian, if I could give myſelf Leave to caſt ſuch a black and groundleſs Imputation upon any one in like Circumſtances with mine, who had given all poſſible Evidence of his Duty and Affection to the preſent Government. My Lords, I have taken the Oaths of Allegiance to Her Majeſty, and that of Abjuration againſt the Pretender; and when therefore I preached the Doctrine of Non-Reſiſtance, it is moſt apparent, that the Government, which I perſuaded my Fellow-Subjects not to reſiſt, is the preſent Government; and I humbly conceive, that the preſent Government can never be overturned, if it be never reſiſted.

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How true a Zeal and Affection I have always borne to Her Majeſty's Perſon and Government, I leave to be judged by your Lordſhips, and the whole World, from thoſe publick Demonſtrations which I have given of it, at all Times, when I had Occaſion to make mention of either. I hope your Lordſhips will pardon me, if I refer to ſome of my own printed Expreſſions, as an evident Proof of my unfeigned Duty and Allegiance. *If to call it the moſt ineſtimable Bleſſing this Nation could enjoy, that Her Majeſty, the good and pious Relict of the Royal Family, ſits now happily upon the Throne of Her Anceſtors; If to pray that God may long preſerve Her for the Comfort and Support of the Church, as the only Security, under God it has to depend upon; If earneſtly to contend for the Safety, Rights, and Eſtabliſhment of Her Majeſty, together with thoſe of the Church; If to vindicate Her Majeſty's Title to the Crown againſt the Uſurpations, Pretences and Encroachments of Her Adverſaries, and to aſſert Her Right to the Throne to have been ſo clear, manifeſt, and undoubted, that even Her worſt Enemies (could ſuch a Pious Princeſs be ſuppos'd to have any) muſt acknowledge it; That ſhe was proclaimed as 'twere by the Voice of God, in the univerſal Joy, Satisfaction, and Unanimity of Her Subjects; That Her perſonal Merit exempted from that, made Her worthy of a brighter Diadem than ſhe wears; If to perſuade Her Subjects, with the moſt hearty Zeal, and Generoſity, to enter into a neceſſary War, for the Defence of Her Majeſty, and the Common Preſervation of our Church, Liberties, and Conſtitution, againſt a powerful Adverſary; If to beſeech God to proſper ſo good an Undertaking, to give an happy Event and Iſſue to ſuch a Rightful Cauſe, to crown our Arms with Victory, and to make them as ſucceſsful, as they are juſt and honourable; and that, in order to this, we are all bound, both in Duty to God and our Sovereign, as well as by our own Intereſt, unanimouſly and heartily to aſſiſt and ſupport Her under this great Undertaking, as far as our Prayers, and Eſtates, Lives, and Fortunes, can ſerve Her; If to perſuade Her Subjects, that the great and threatning Dangers of our Enemies, ſhould have that juſt Effect upon us, to unite us, as much in our Reſolutions and Affections, as they do in our common Intereſts, Apprehenſions, and Troubles; If to ſet out the Bleſſings we enjoy in the wiſe Conſtitution of our Government and Laws, in the moſt refined Policies of our Parliament and Miniſtry, in the Strength and Number of our Armies, Fleets, and Confederates, in the Care and watchful Vigilance, the Courage, Reſolution, and Conduct of our General, and, above all, in the Piety, and*

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and Prudence of our Moſt Gracious QUEEN; *If to affirm that She daily gives freſh Inſtances of Her Wiſdom, in the happy Adminiſtration of her Government, and in nothing more ſhews Her Policy, and diſtinguiſhing Judgment, than in making Choice of ſuch Miniſters of State, who are acceptable to their Country, and expreſs ſuch a Zeal and Steadineſs in its Service and true Intereſts, and whom nothing could Bribe, or betray into a Party, wherein it might any ways ſeem to be endangered; If, with the moſt ardent Requeſts to implore God's Providence, which through ſo many Dangers and Difficulties has raiſed up, and preſerved Her Majeſty, to carry on theſe glorious Undertakings with Succeſs, that She may be able to reſtore and ſettle the Peace of* Europe, *in its juſt Rights and Limitations; and that, as God has beſtowed a Crown upon Her in this World, as the Reward of theſe heroick and pious Deſigns, ſo after a long Reign here, he would advance Her to a higher Throne in Heaven, and dignify Her with a glorious and immortal Crown hereafter:* If this, my Lords, I ſay, is falſely and maliciouſly to ſuggeſt, that Her Majeſty's Adminiſtration, both in Eccleſiaſtical and Civil Affairs, tends to the Deſtruction of the Conſtitution; If this be charging Her Majeſty, and thoſe in Authority under Her, both in Church and State, with a general Mal-Adminiſtration; If this be, as an Incendiary, to perſuade Her Subjects to keep up Diſtinctions of Factions and Parties; If this be inſtilling groundleſs Jealouſies, fomenting deſtructive Diviſions, and ſtirring up Her Majeſty's Subjects to Arms and Violence, againſt any but Her Enemies; then, my Lords, I am guilty of this Article of Impeachment; otherwiſe I am innocent.

My Lords, I have always thought it my Duty, upon all publick Occaſions, to aſſert the Principles of Loyalty and Subjection to the Supreme Power, whenever I had a proper Call ſo to do; of this there are numberleſs Witneſſes in thoſe ſeveral Places to which I have belonged. One of theſe I beg Leave of your Lordſhips particularly to mention, *Magdalen College* in *Oxford*, whereof I am at preſent an unworthy Member, and which by the known Sufferings of the whole Body for the Church and Conſtitution, contributed as much towards the late happy Revolution, as any Society in the Kingdom: To which Honourable Society I humbly appeal for my Character and Behaviour. I could alſo appeal for the ſame to a Right Reverend Lord, that now ſits on the Bench of Biſhops.

Had it been fit to have troubled your Lordſhips with Evidences, of my hearty Affection to the preſent Government, I could have produced them in great Abundance, from the Perſons with whom I have converſed, from the Gentlemen whom I have bred up, and from the Congregations to which I have preached. If my Principles had any Tendency towards Alienating the Affections of Her Majeſty's Subjects, ſurely ſome one Inſtance of my Diſloyalty to the QUEEN, ſome favourable Expreſſions toward the Pretender, ſome Indications of my Diſlike to the preſent Settlement, and the Proteſtant Succeſſion, might have been pitched upon, and expoſed to your Lordſhips, in order to juſtifie the Charge of Sedition againſt me. But I cannot but with Pleaſure obſerve to your Lordſhips, that from the whole Courſe of my Actions, no one Inſtance of that kind is alledged, or ſo much as pretended.

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My Lords, the Charge of wickedly wreſting divers Texts of Scripture lies very heavy upon me, as a Chriſtian and Miniſter of Chriſt. If I am guilty of it, there is another Tribunal, another Bar, at which I am to appear, and where, by that Scripture which I have wreſted, I ſhall be judged and condemned. In the mean Time, my Lords, I hope that thoſe, whoſe particular Profeſſion and Studies qualify them to be the moſt competent Judges of ſuch Matters, will abſolve me in this Particular.

Upon the whole, therefore, my Lords, I hope it appears, that I am not guilty of any of the Crimes of which I am accuſed; that I have tranſgreſſed no Law of the Land, neither, Statute, nor Common Law, relating either to Her Majeſty, or to my Fellow-Subjects, to the Church, or to the State: And that I may with all Humility apply to my own Caſe, the Words of that bleſſed Apoſtle, whoſe Doctrine I defend, and whoſe Example I hope I ſhall have the Grace to follow, *Neither againſt the Law, nor againſt the Temple, nor againſt Cæſar, have I offended any thing at all.*

What I have hitherto humbly offered to your Lordſhips, relates to my Words and Actions; and as to the Thoughts and Intentions of my Heart, which are known only to God and my own Conſcience, and which are affirmed in my Impeachment to be wicked, ſeditious, and malicious; I call the Searcher of Hearts to Witneſs, in the moſt ſolemn and religious Manner, as I expect to be acquitted before God and his holy Angels, at that dreadful Tribunal, before which, not only I, but all the World, even your Lordſhips, who now ſit in Judgment upon me, muſt appear, to be acquitted or condemned; that I had no ſuch wicked, ſeditious, or malicious Intentions; that there is nothing upon Earth I more deteſt and abhor: That my Deſigns were, in every Reſpect, directly contrary. I had no Intention to aſperſe the Memory of his late Majeſty, to traduce or condemn the late happy Revolution, or to arraign the Reſolutions of both Houſes of Parliament. So far was I from deſigning to undermine and ſubvert Her Majeſty's Government, and the Proteſtant Succeſſion as by Law eſtabliſhed, that it was my ſincere Intention to exert my beſt Endeavours for their Security. So far was I from intending to perſuade Her Majeſty's Subjects to keep up a Diſtinction of Parties and Factions, from inſtilling groundleſs Jealouſies, fomenting deſtructive Diviſions among them, or exciting and ſtirring them up to Arms and Violence, that my Aim was to perſuade them to lay aſide all Diſtinctions, to unite in one well-compacted Body, to be obedient to their Governors, and to ſupport the preſent Eſtabliſhment. So far was I from deſigning to defame Her Majeſty's Adminiſtration, or to infuſe any undutiful Thought of Her, that I not only pay Her all Honour and Obedience, but am, from the Bottom of my

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my Soul, zealouſly and affectionately Loyal to Her; being entirely perſuaded, that the Church is ſo far from being in Danger from Her, that She is as heartily affected to its Eſtabliſhment and Proſperity, as I hope I have always ſhewed my ſelf to be to Her Sacred Perſon and Government.

As to the Proteſtant Succeſſion by Law eſtabliſhed, though the Doctrine which I preached tends to the Security of it (as I heartily deſire every thing by me ſpoken ſhould tend;) yet having no Occaſion in either of my Sermons to take Notice of it, I do no where in thoſe Sermons mention it, nor ſay any thing that can be interpreted to have any View towards it. Therefore, though I cannot with my beſt Application apprehend, how it comes to be ſaid in the Preamble to my impeachment, that I had deſigned to undermine and ſubvert it; yet I ſhall gladly take this Opportunity of declaring my ſelf before your Lordſhips upon that Subject. It is my ſincere and hearty Prayer, that God would prolong the Life of Her moſt Sacred Majeſty, whoſe exemplary Goodneſs and Piety, give us the beſt Hopes we have of averting that Vengeance, which is due to the Wickedneſs of the Age we live in, that he would bleſs Her Councils at Home, and Her Arms abroad, and make Her Reign exceed that of Her Renowned Predeceſſor Queen *Elizabeth*, in Length as well as Glory. But when the Inheritrix of the Bleſſed Martyr's Crown and Piety, when She, the Deſire of our Eyes, and the Breath of our Noſtrils, ſhall, full of Years and Honour, be gather'd to Her Fathers, and exchange Her Temporal for an Immortal Crown; (ſince we are deprived of that Prince Her Royal Offspring, whoſe Loſs no true Lover of his Country, and of the Royal Family, can Reflect upon without a bleeding Heart, and whom God in his Anger took from us, becauſe we were unworthy of ſo ineſtimable a Bleſſing,) I earneſtly beſeech God, in Defect of future Iſſue from Her Majeſty, to perpetuate the Succeſſion of the Crown, as it is eſtabliſhed in the moſt Illuſtrious Houſe of *Hanover*, which I look upon as, next to His Providence, the beſt Guard we have againſt Popery and Arbitrary Power, the beſt Security of our Church, and of the Conſtitution of our Government, which is the Glory and Happineſs of our own Nation, and the Envy of all others. And I cannot yet apprehend, how the Doctrine which I have taught, tends to weaken or undermine it; nor, on the other Side, how the Doctrine of Reſiſtance, which brought Her Majeſty's Royal Grand-father to the Block, (ſuppoſing it a true Doctrine) comes to be mentioned, or thought of; much leſs to be induſtriouſly maintained, as a neceſſary and indiſpenſible Duty, under the moſt mild and gracious Adminiſtration of the beſt of Queens. Nothing ſeems more ſtrange, than that Reſiſtance ſhould be ſo carefully taught under ſuch a Government, unleſs it be that Non-Reſiſtance ſhould overturn it.

So far was I therefore from having any of thoſe wicked, malicious, and ſeditious Deſigns, which are laid to my Charge, that my Intention were on the contrary, to inſtill the Principles of Loyalty and Obedience into my Fellow-Subjects, and withal, to put a Stop to that Torrent of Lewdneſs, Irreligion, and Atheiſm, of which I have given your Lordſhips ſo many flagrant Teſtimonies.

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Thoſe outragious Inſults upon God, and Goodneſs, are ſo provoking, that they may excuſe ſome Heat and Severity of Expreſſion in a Miniſter of Chriſt, who has a juſt Senſe of Religion, a due concern for the Diſcharge of his Holy Function, or for the Honour of his Maker and Redeemer. And if any Objection be made againſt me, for treating with an unbecoming bitterneſs ſuch daring *Rabſhekahs*, who defy the Living God; I beg Leave to reply, in the Words of a Reverend Father of our Church, Let them conſider what Moderation, and Temper, a Man had need be of, that in this Nation, and this Age ſhall ſpeak againſt Faction, and Rebellion, (I add Deiſm, Tritheiſm, and all Sorts of Hereſy, Blaſphemy, and Atheiſm) without extraordinary Severity. Nay, it is our Duty, in ſuch Caſes, to expreſs our ſelves with Warmth and Sharpneſs, according to the Example of our Bleſſed Saviour, who, though Meekneſs it ſelf, could not but ſhew the utmoſt Indignation at the Prophaning the Houſe of God. This is not, my Lords, to rail, but to rebuke; and thoſe who ridicule, or cenſure us for it, either have not, I preſume, or will not own they have, a right Notion of the Dignity of our Office; will not conſider, that we are the Ambaſſadors of Chriſt, that we are commanded, in his Name, to exhort and rebuke with all Authority; and that our Authority is derived from thoſe to whom it was ſaid by our Bleſſed Saviour, *He that deſpiſeth you, deſpiſeth me; and he that deſpiſeth me deſpiſeth him that ſent me.* Whatever Expreſſions, therefore, in my Sermons may have ſlipt from me, which ſeem ſo far liable to Exception, as to carry a Senſe I never intended (as he muſt be an happy Speaker indeed, whoſe Words are altogether unexceptionable) yet, I humbly hope, the above-mentioned Provocation will plead my Excuſe, or that, at the very worſt, ſome haſty, or even violent Expreſſions, ſhall not be deemed High Crimes and Miſdemeanors. I deſire it may be farther conſidered by your Lordſhips, that I could have no Temporal Intereſts to ſerve by the Doctrines I advanced; and therefore could have no Deſign in View, but to diſcharge my Duty to God, as a Miniſter of Chriſt, and to my Sovereign, as a Faithful and Loyal Subject.

My Lords, theſe Things being humbly offered to the Conſideration of your Lordſhips, I hope, that what I have already ſuffered, as a ſuppoſed Criminal, will be thought ſufficient Puniſhment for one, who has offended againſt no Law yet in Being. It muſt be thought no little Grief and Vexation to any ingenuous Man, to be brought to this Bar, under the leaſt Suſpicion of ſuch Crimes as are laid to my Charge: But for a Perſon of my Function to have an Accuſation of this Nature alledged againſt him, ſo heinouſly reflecting upon his Holy Character, is ſuch a foul Blot, as, though his Innocence ſhould at laſt be cleared by your Lordſhips, upon the moſt undeniable Evidence,

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Evidence, muſt leave a Scar upon his good Name; which is to all Men dear, but much more ſo to thoſe, whoſe whole Capacity of doing good in the World principally depends upon it.

My Lords, as the Matter of my Charge was highly criminal, ſo the Form and Manner of it ran in ſuch general and uncertain Terms, that 'twas impoſſible to know the Grounds of my Accuſation; or how to defend my ſelf, when I knew not where I ſhould be attacked. So that, after I had provided as particular an Anſwer as ſuch a general Accuſation would admit of, the Commons were pleaſed in their Replication to ſay, That there were ſeveral Things in it foreign to the Charge. To the great Misfortune of falling under the Diſpleaſure of that Honourable Houſe, I might add, That of a long and cloſe Confinement, and of an Expence no ways proportioned to my Circumſtances. Theſe, my Lords, are Afflictions, which can be conceived by no body ſo well as by him, who has been ſo unhappy as to feel the Weight of them. And among theſe I reckon it not the leaſt of my Sufferings, that I have been for ſo long a Time debarred from taking Heed to that Flock, over which the Holy Ghoſt hath made me an Overſeer. For, ever ſince I have had my Liberty, by the Favour of your Lordſhips admitting me to Bail, I have purpoſely avoided doing any Part of the Duty of my Function, or even appearing in Publick, leſt it ſhould occaſion any Tumult or Diſturbance; as my neceſſary Attendance on your Lordſhips from Time to Time has ſince been thought unhappily to have done, without any Fault of mine, or the leaſt Degree of Encouragement given by me, which I profeſs, in the Preſence of God, to abhor.

All theſe Circumſtances, my Lords, being conſidered, together with the publick Manner, the Length and Solemnity of my Trial, before ſo Auguſt a Court of Judicature, by which Means I am made a Gazing-ſtock, both by Reproaches, and Afflictions, and a Spectacle to the whole World; I have ſtood in this Place, Day after Day, to hear my ſelf accuſed of the blackeſt Crimes, and openly reviled; I have been repreſented as a Papiſt in Diſguiſe, as a Rebel, as an Enemy to Her Majeſty's Perſon and Government, and a Favourer of the Pretender, though I have abjured him, (but not forgot him, as a learned Perſon was pleaſed to ſay;) that is, as the worſt of Perjured Villains. I have been called *an inſignificant Tool of a Party* on the one hand, and a moſt dangerous Incendiary on the other; nay, an Angel, that is, a Devil, detached from the Infernal Regions. All theſe Things, I ſay, being conſidered, (and your Lordſhips, I am ſure, in tender Compaſſion to me, will conſider them,) it is moſt certain, that whatever be your Lordſhips Determination concerning me, I cannot eſcape without being a very great Sufferer; and I ſhall have been abundantly puniſhed, though I ſhall have the Happineſs to be by your Lordſhips at laſt acquitted.

Yet I cannot reflect without Comfort, (the greateſt of Comforts, next to that of a good Cauſe, and a good Conſcience) that I anſwer for my ſelf, this Day, before the moſt Illuſtrious Aſſembly in the World, the whole Body of the Nobility of *Great Britain*, whoſe princely Extraction, and high Quality, whoſe magnificent Titles, and ſplendid Fortunes, whoſe hereditary Candor and Generoſity, inherent in Noble Blood, inſeparable from the Birth and Education of Peers; in a Word, whoſe ſolid Judgment, and exact Skill in the Laws of this Realm, ſo eminently qualify them for the final Determination of Juſtice; who are neither to be ſwayed by Hopes, over-ruled by Fears, nor miſled by any falſe Prejudice or Paſſion. If it muſt be a Man's Misfortune to labour under ſuch hard Circumſtances as mine, it is no ſmall Mitigation of them, that he pleads his Cauſe before ſuch Judges, who, he knows, will decide it with the ſtricteſt Impartiality, Equity, and Honour.

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And when I conſider, that I now ſtand, and am judged for ſome of the Doctrines of that Goſpel, which God delivered unto our Fathers and you, my Lords the Biſhops, their Succeſſors, have received from Chriſt and His Apoſtles, as the ſacred *Depoſitum* of the Church, to be maintained inviolably in its primitive Simplicity: When I conſider, what is the Cauſe for which I am this Day called in Queſtion; that it is one of thoſe Eternal Truths, which you are ſo ſolemnly commiſſioned to teach, and earneſtly contend for: When I conſider, that 'tis what our Bleſſed Lord and his Apoſtles ſealed with their precious Blood, and ſo many primitive Martyrs maintained even in the midſt of Flames; ſo many learned Biſhops and Confeſſors recommended to Poſterity in their immortal Writings, as the diſtinguiſhing Badge and Glory of our Reformation; nay, when I conſider that 'tis what you your ſelves have already ſupported with inconteſtable Reaſon and Authority, it is no ſmall Satisfaction to me to think, that as your Lordſhips are my Judges, ſo, I hope in God, you muſt be my Advocates. What a Guilt, as well as Diſgrace, would it juſtly devolve upon the Clergy, to recede from any Principle of our excellent Church, eſpecially from what has heen ſo long retained, and boaſted of, as its peculiar Character! By abandoning which, we muſt relapſe into ſome of the worſt Doctrines even of Popery it ſelf, and render our ſelves the moſt contemptible, as well as inconſiſtent Church of the World! I think I may therefore, with Confidence, uſe the Words of the great Apoſtle to his Accuſers, *Having obtained help from God, I continue unto this Day, witneſſing both to ſmall and great; ſaying none other Things than thoſe which the Prophets and* Moſes (I may add, Chriſt and his Apoſtles,) *did ſay.*

For, my Lords, if I have committed any Faults or Errors in Expreſſion, yet, as I inſiſt upon my Innocence with Reſpect to all the high Crimes laid to my Charge, ſo I muſt ſtill inſiſt upon all the Doctrines which I have taught, as being agreeable to the Word of God, and to the Doctrine of our moſt excellent and truly Apoſtolical Church, and which we of the Clergy are obliged, both by Subſcription and Oath, to acknowledge and defend.

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fend. And how hard are our Circumſtances, if we muſt be puniſhed in this World for doing that, which, if we do not, we ſhall be more heavily puniſhed in the next! What a Condition are we in, if we are commanded to cry aloud and ſpare not, to exhort, rebuke, in Seaſon and out of Seaſon, on the one hand, and proſecuted, impriſoned, ruined on the other! If this be our Caſe, who, indeed, is ſufficient for theſe Things? And how truly may we of the Miniſtry, above all Men living, apply to our ſelves thoſe Words of the Apoſtle, *If in this Life only we have Hope in Chriſt, we are of all Men moſt miſerable:* But our Comfort is, that our Hope in Chriſt is not only in this Life. Juſtly might we be reproached, and deſerve ſome of thoſe Reflections, which in theſe licentious Times are ſo plentifully poured upon us, were we not ready to practiſe the Doctrines we preach, of Self-Denial, taking up our Croſs, and patient Submiſſion to Sufferings and Afflictions. For my own Part, it matters not what becomes of me, nor is my Deliverance, or Ruin, of any Moment to the World; or, if it be, I am not only ready to be bound, but to die, could I by that do Service to my Queen, my Church, or my Country: Neither count I my Life dear, ſo that I might finiſh my Courſe with Joy, and the Miniſtry which I have received of the Lord Jeſus. But may God ſo direct your Lordſhips, that through me a Wound may not be given to the Doctrines of the Scriptures, and of the Church, which Chriſt hath purchaſed with his own Blood.

And ſo, with all Humility and Reſignation, I ſubmit my ſelf to your Lordſhips Judgment, be it what it will. One Thing, I am ſure, it can never take from me, the Power of wiſhing and praying, and (whether in Proſperity or Adverſity, whether I am acquitted, or condemned) I ſhall always pray for the Queen my Sovereign, for your Lordſhips my Judges, and for the Commons my Accuſers; moſt earneſtly beſeeching Almighty God, to deliver all Orders, and Degrees of Men amongſt us, *from all falſe Doctrine, Hereſy and Schiſm, from Hardneſs of Heart, from Contempt of His Word, and Commandment; from Envy, Hatred and Malice, and all Uncharitableneſs.*

Reply to the Doctor's Defence.

The Managers, in their Reply to the Doctor's Defence, took Notice of the Conceſſions made by his Counſel, *viz.* 1. *That Neceſſity creates an Exception to the General Rule of Submiſſion to the Prince.* 2. *That this Exception was underſtood, or implied in the Laws that require ſuch Submiſſion.* And, 3. *That the Caſe of the Revolution was a Caſe of Neceſſity.* They ſaid, Theſe Conceſſions fully anſwered the Commons Meaning, and they could not forbear congratulating them upon the Succeſs of their Impeachment; that in full Parliament this erroneous Doctrine of unlimited Non-Reſiſtance was given up and diſclaimed: But though the Doctor, for Fear of impending Puniſhment, had tolerated his Counſel to make theſe unwilling Conceſſions, yet, ſince he himſelf did not expreſsly come into theſe Conceſſions, they thought they ought not to avail him.

That he was not impeached for preaching the general Doctrine of Non-Reſiſtance, as his Counſel ſuggeſted; but for preaching againſt an excepted Caſe, after he had ſtated the Exception. This was not preaching the Doctrine of Non-Reſiſtance in the General Terms uſed by the Apoſtles, and Fathers of the Church, where Caſes of Neceſſity might be underſtood to be excepted by a tacit Implication, as his Counſel allowed: But 'twas preaching directly againſt the Reſiſtance uſed at the Revolution, and muſt be deſigned to bring an Odium upon the Revolution, and thoſe who were concerned in it; he would otherwiſe have ſhewn, That the Reſiſtance uſed at the Revolution was abſolutely neceſſary, and the only Means left to revive the Conſtitution: But, inſtead of this, he denied there was any Reſiſtance in the Revolution; and ſaid, They were the greateſt Enemies to it, who caſt ſuch black and odious Colours upon it.

Therefore the Security of the Government, and the Proteſtant Succeſſion, the undeceiving of the People, the quieting the Minds of the Proteſtant Diſſenters, the vindicating the Honour of the late Revolution, and the Glory of their great Deliverer, and to baniſh Sedition from the Pulpit, which ought to be Sacred to Divine Purpoſes; theſe Things did require the Commons to demand their Lordſhips Judgment on this Offender.

Nor was his Puniſhment, as the Doctor obſerved, all they aimed at; but what they expected from their Lordſhips Juſtice was, the ſupporting the Eſtabliſhment, and the preventing all Attempts to ſap its Foundation for the future.

Q. If the very Words, ſuppoſed Criminal, ought not to have been laid.

The Lords being adjourned to their Houſe, it was propounded to the Judges, Whether by the Law of *England*, and conſtant Practice in all Proſecutions, by Indictment, or Information, for Crimes and Miſdemeanors, by writing or ſpeaking the particular Words ſuppoſed to be Criminal, muſt not be expreſsly ſpecified in ſuch Indictment or Information? and the Judges unanimouſly declared, *That the particular Words, ſuppoſed to be Criminal, ought to be ſpecified* in ſuch Indictment or Information.

However, it was carried by a Majority in the Houſe of Peers, That, by the Law and Uſage of Parliament in Proſecution by Impeachments for High Crimes and Miſdemeanors, by writing or ſpeaking *the particular Words, ſuppoſed to be Criminal, were not neceſſary to be expreſsly ſpecified* in ſuch Impeachment.

Proteſt of ſome Peers.

Againſt this Reſolution ſeveral Peers proteſted for the following Reaſons, *(viz.)*

1. Becauſe we conceive the Law of the Land is as much the Rule of Judicature in Parliament as it is in inferior Courts of Juſtice; and ſince by the Opinions of all the Judges, in all Proſecutions by Information, or Indictment, for writing and ſpeaking the particular Words, ſuppoſed to be Criminal, muſt be expreſsly ſpecified, in ſuch Information or Indictment; and that this is the Law of the Land, confirmed by conſtant Practice: We conceive that there is the ſame Reaſon and Juſtice for ſpecifying in Impeachments the particular Words, ſuppoſed

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to be Criminal; for otherwiſe a Perſon, who is innocent and ſafe by the Law, out of Parliament, may, nevertheleſs, be condemned in Parliament.

For we conceive, that ſome Reaſons of Law and Juſtice, why the Words, ſuppoſed Criminal, muſt be ſpecified in Informations and Indictments, may be, that the Party accuſed may certainly know his Charge, and be thereby enabled to defend his Innocence; that the Jury may know it too, and be enabled thereby the better to apply the Evidence given by the Witneſſes to the Matter of ſuch Charge; and that the Judges themſelves may the better judge of the Nature of the Crime, and of a Puniſhment adequate to it, which, in Caſes of Miſdemeanors, which are indefinite and innumerable, muſt extremely vary, according to the Heinouſneſs of the Offence: And, finally, that the Houſe of Lords, upon Complaint to them, may alſo judge whether the Fine, which is uſually one of the Puniſhments for Miſdemeanors, do not exceed the Demerit; eſpecially ſince by the Bill of Rights exorbitant Fines are declared to be illegal: Which Reaſons ſeem to be fully as ſtrong in the Caſe of Impeachments as in Indictments, or Informations; for the particular Words are as neceſſary to enable the Lords to determine uprightly, and impartially, as the Jury, or Judges, and as neceſſary for the Defence of the accuſed here, as in the Courts below; and, if there were to be a Difference, it ſeems more neceſſary in this High Court; for the weightier the Proſecution is, the more Need has an unfortunate Man of Indulgence, and all lawful Favour; and ſurely there cannot be a heavier Load upon a Man, than an Accuſation by all the Commons of *Great Britain*.

2. We do not remember any Precedent inſiſted on for the Maintenance of this Reſolution, ſave only the Caſe of Doctor *Manwaring*, which, we conceive, could not warrant this Reſolution: For, firſt, the Words charged upon him by the Commons Declaration, were not compared with the Sermon, though it was deſired, and conſequently no Lord could ſay, They were the Words of the Sermon; and therefore, upon ſuch Uncertainty, we conceive, we could not ground a poſitive Reſolution. 2*dly*, The Charge upon him, taken out of his Sermon on the 4th of *May* 1628, ſeems to be the very Words by him ſpoken; for they were atteſted by Ear-Witneſſes, who ſurely never were, nor could be admitted to atteſt their own Conjectures of the Scope of a Sermon, and not ſpecify the very Words; for that would be to make the Witneſſes the Judges.

3*dly*, Beſides, in ſuch a Caſe as this, where the Party did not inſiſt upon any legal and juſt Exceptions, of which he might have taken Advantage, if he had made his Defence, which he did not, but ſubmitted and begged Pardon; this ought not to be looked upon as a Precedent, or Authority, to juſtify the Illegality of the Form of that Impeachment.

3. But although this Precedent were full and expreſs to the Point reſolved, we humbly conceive, That one Precedent is not ſufficient to ſupport a Law and Cuſtom of Parliament, nor conſequently a Reſolution declaring it; for ſurely there is a great Difference between a ſingle Inſtance, and a Law and Cuſtom.

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4. Since we conceive, that in all the Precedents, at leaſt all that have appeared to us for four Hundred Years, of the Proſecutions in Parliament, the particular Words, charged as Criminal, have been conſtantly expreſſed in the Articles, or Declarations of Impeachment.

Upon the whole therefore, we humbly conceive, that ſo great a Number of Precedents is ſufficient to out-weigh the ſingle Inſtance of Dr. *Manwaring*'s Caſe, how oppoſite ſoever it may ſeem to be to the preſent Caſe; which, for the Reaſons we have mentioned, is far from being plain and clear, or having the full Authority of a Precedent: And the Law and Cuſtom of Parliaments, as we conceive, is to be determined by conſtant Courſe and Practice, and not one Precedent occaſioned by ſuch odious Doctrines as thoſe of Dr. *Manwaring*: Nor can the contrary Aſſertion to the aboveſaid Reſolution be of any ill Conſequence to Impeachments of the Commons; becauſe it is eaſy for them to ſpecify the Words which offend them, but extremely difficult for the accuſed to defend himſelf without knowing them: And as all who are charged Criminally, have Leave to make their Defence, ſo they ſhould alſo have allowed to them all lawful Means for it.

Names of the Proteſting Lords.

Jo. Ebor. Scarborough, Northampton, N. Dureſme, W. Ceſtriens', Jerſey, Suſſex, Stawell, North and *Grey, Scarſdale, Conway, Willoughby Br. Plymouth, Guildford, Craven, R. Ferrers, Lempſter, Osborne, Beaufort, H. London, Howard, Denbigh, Leeds, Guernſey, Yarmouth, Thanet, Nottingham, Rocheſter, Angleſey, Berkſhire, Weymouth, Abingdon.*

The Queſtion being put in the Houſe, *That the Commons had made good their firſt Article of Impeachment*, as alſo the 2d, 3d, and 4th, it was, as to every Article, *Reſolved in the Affirmative.*

On *Monday*, *March* the 20th, the Lords being come down to the Court, erected in the Hall, the Queſtion was again put to every Peer, beginning with my Lord *Pelham*, the Junior Baron; and having delivered their reſpective Opinions, the Lord Chancellor numbered them, and declared, That there were one Hundred and Twenty of their Lordſhips preſent, of whom *Sixty-eight had found Dr.* Sacheverell *GUILTY* of the High Crimes and Miſdemeanors, charged on him by the Impeachment of the Houſe of Commons, and *Fifty-two had found him Not Guilty.*

The Doctor convicted,

Then the Doctor was brought to the Bar and kneeled till the Lord Chancellor bid him riſe; after which he moved in Arreſt of Judgment. 1. That no entire Clauſe, Sentence, or Expreſſion, contained in either of his Sermons, or Dedications, was particularly ſet forth in the Impeachment. 2. That the Articles were ſaid to be only by the Knights, Citizens, and Burgeſſes, leaving out Commiſſioners of Shires, and Boroughs, which was neither agreeable to the Impeachment, nor to the Title of the Houſe of Commons ſince the Union.

moves in Arreſt of Judgment.

Then the Lords adjourned to their Houſe: And on the 23d of *March*, the Commons came up with their Speaker to the Houſe of Lords,

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Lords, to demand Judgment; and the Dr. being brought to the Bar, kneeled till the Lord Chancellor bid him ſtand up; and the Speaker of the Commons having demanded Judgment.

The Lord Chancellor acquainted the Dr. that his Exceptions in Arreſt of Judgment had been over-ruled; and then proceeded to pronounce the following Judgment, *viz.*

That you Henry Sacheverell, *Dr. in Divinity, ſhall be, and you are hereby enjoin'd not to Preach during the Term of three Years next enſuing: That your two printed Sermons, referred to by the Impeachment of the Houſe of Commons, ſhall be burnt before the* Royal Exchange *in* London, *between the Hours of One and Two of the Clock on the 27th of this Inſtant* March, *by the Hands of the Common Hangman, in the Preſence of the Lord Mayor of* London, *and the Sheriffs of* London *and* Middleſex. And the Doctor being withdrawn, an Order was made, directed to the Lord Mayor and Sheriffs to ſee the Sentence executed.

Hiſtorical Remarks on Doctor Sacheverell's Trial.

This favourable Sentence was looked upon by the Doctor's Friends, rather as an Acquittal than a Condemnation, and as a certain Indication of the Impotence of his Enemies: And that Night ſeveral of the Streets of *London* and *Weſtminſter* were illuminated, and Bonfires made, where every one that paſſed by was compelled to drink the Doctor's Health.

The Lord Mayor inſiſted, That as he was a Member of the Houſe of Commons, he was excuſed from attending at the burning of the Sermons purſuant to their Lordſhips Sentence; and ſo left the Execution of the Sentence to the Sheriffs.

During the Trial, the Doctor was daily attended from the *Temple*, where he then reſided, to *Weſtminſter-Hall*, by vaſt Numbers of People huzzaing, and praying for his Deliverance; and many that were not much his Friends were obliged to pull off their Hats, and Huzza with them as the Coach went by, among whom were ſeveral Members of Parliament; and as the Queen was one Day going to *Weſtminſter* in her Chair, the People gathered about her, and cryed out: *God bleſs Your Majeſty, and the Church! We hope your Majeſty is for Dr. Sacheverell:* For the People generally looked upon this Proſecution as an Attempt to overturn the Church, and eſtabliſh the Diſſenters. And as at the Revolution, when they thought their Religion to be in Danger from the Papiſts, they pulled down ſeveral Maſs-Houſes, and others whoſe owners were mark'd as Zealots of that Perſuaſion: So now when they looked upon the Church to be in as imminent Danger from the Fanaticks, they in like Manner expreſſed their Reſentment againſt the Diſſenters, and particularly on the firſt of *March*, when they reſorted to Mr. *Burgeſs*'s Meeting-Houſe, with more Zeal than Devotion, and having pulled down the Pulpit, Pews, Wainſcot, and all that was cumbuſtible, they carried them into *Lincoln's-Inn-Fields*, and made a Bonfire of them, crying out, *High Church, and* Sacheverell! Several other Meeting-Houſes alſo ſuffered by their Hands: And 'tis ſaid, they began to threaten the Houſes of ſome Whig Patriots; and particularly the Lord Chancellor's, the Earl of *Wharton*'s, the Biſhop of *Sarum*'s, Mr. *Dolben*'s, Mr. *Hoadley*'s, &c. But if they had any ſuch Intentions, they were prevented, being diſperſed by a Detachment of the Horſe-Guards; and the Guards were afterwards doubled, and the Trained-Bands commanded to their Arms, while the Trial laſted, in order to prevent further Miſchief.

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When Gentlemen ſpeak of the Juſtice and Lawfulneſs of the *Reſiſtance* uſed at the Revolution, they ſeem to inſinuate, that every Step that was taken towards it, was perfectly agreeable to our Conſtitution, and that the whole Scheme from one End to the other, was formally laid and concluded on by a Majority of the Nation, before the Prince of *Orange* came over; whereas it is very certain, that different Parties had then very different Views; and though they all agreed, that Reſiſtance was neceſſary to reſtrain King *James* from deſtroying the Conſtitution, yet few thought of the Abdication, and fewer yet of the Prince of *Orange*'s being advanced immediately to the Throne; for this ſeems to have been effected by Abundance of extraordinary Accidents, which no human Wiſdom could foreſee. It was generally expected, upon the Arrival of the Prince of *Orange*, the King would have agreed to call a free Parliament, and have conſented to ſuch Acts as ſhould have ſecured our Religion and Laws againſt future Incroachments; or if he had refuſed this, That the Princeſs of *Orange* would have been declared Regent of the Kingdom, and have had the Adminiſtration of the Government during her Father's Life. Farther than this, I am ſatisfied, the Views of the Majority did not extend at firſt: But when King *James* retired beyond Sea, and the Vote of Abdication, and the Vacancy of the Throne had paſſed, it ſeemed generally agreed, that the Prince and Princeſs of *Orange*, or one of them, ought to ſucceed him as on a Demiſe of the Crown; and it is manifeſt, a Majority were for the Princeſs of *Orange*'s ſucceeding, as if her Father had been dead, till ſhe herſelf was pleaſed to decline it, for Reaſons not difficult to be gueſſed at; and thereupon it was agreed, to veſt the Adminiſtration *ſolely* in the Prince; to proclaim them jointly King and Queen; but *to exclude the Princeſs* from any Share in the Government, as ſhe deſired to be.

It is very evident, Reſiſtance was neceſſary at the Revolution, to preſerve the Conſtitution; but it was never intended to make the Crown Elective, which was before Hereditary, for this would have been deſtroying an Eſſential Part of our Conſtitution, inſtead of preſerving it: It was indeed held, that as there might be a Natural Incapacity to govern, as Frenzy, or doating Old Age; ſo there might be alſo a Moral Incapacity, ſuch as an irremoveable Perſuaſion in a falſe Religion, ſo as to render the Exerciſe of the Government by the reigning Prince impracticable, and our Obedience to him conſiſtently with the Conſtitution impoſſible; and this being unanimouſly agreed to be the Caſe at the Revolution, the Crown devolved of Courſe on the Princeſs

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Princeſs *Mary*, the King's eldeſt Daughter and Heir, and ſhe being pleaſed to waive her Right in Favour of her Husband the Prince of *Orange*, no Body had any Reaſon to oppoſe his being advanced to the Throne: For ſo it was in the Caſe of *Henry* VII. who married the Princeſs *Elizabeth*, the undoubted Heireſs of the Crown. This Princeſs alſo was pleaſed to conſent (tacitly at leaſt) that the Executive Power ſhould be veſted ſolely in her Husband, and the Lords and Commons concurring in it, *Henry* VII. was recognized.

Some indeed would have had it, that the Government was entirely diſſolved at the Revolution; that we were in a State of Nature again, and might go to a new Election, and ſettle the Government as we ſaw fit: But this Opinion muſt have made mad Work; for if the Government was diſſolved, and the Laws were no longer in Force, no Man could have had a Right to Houſes or Eſtates, ſuch Rights being fixed and limitted only by the Laws: Then the Rabble would have been at Liberty to ſcramble for the Eſtates and Effects of their Betters, and would have had as good a Right to elect and appoint their Governors, as the States of the Kingdom: And indeed there could be no ſuch Thing as States, if the Government was diſſolved. But the Caſe was otherwiſe, the King was indeed incapable of governing on account of his Bigotry; but then we looked upon ourſelves to be in the ſame Condition as on a Demiſe of the Crown, and as the Princeſs, the next Heir, and the Lords and Commons, that is every Branch of the Legiſlature, agreed to ſet the Crown on the Head of the Prince of *Orange*, we might well recognize him our lawful Prince: Had Queen *Mary* done this by a formal Act of Parliament, I am confident there would not have been a Man in the Kingdom, unleſs Papiſts, that would have oppoſed it. The lodging the Adminiſtration ſolely in the Prince of *Orange*, and excluding the Princeſs from any Share in the Government, was what ſhocked Archbiſhop *Sancroft*, and other great and good Men, who were very well ſatisfied with the Reſiſtance that had been made to King *James*, and the Application that was made to the Prince and Princeſs of *Orange*, to aſſert their own and the People's Rights, and ſave the Conſtitution: Every one would have been ſatisfied if the Princeſs of *Orange* had been proclaimed Queen, and afterwards called a Parliament, and ſettled the Crown upon her Husband the Prince. None were diſſatisfied at his aſcending the Throne, but with the *Manner of his Advancement*; becauſe it ſeemed to break into the Hereditary Succeſſion, and had the Appearances of an Election: Though, as I have obſerved already, ſince the Princeſs, on whom the Crown devolved by the Abdication of her Father, (in the ſame Manner as if he had been dead) conſented to transfer her Right to her Husband, I do not ſee why we might not without Scruple, obey the Prince of *Orange*, and every other Prince on whom he and his Parliament ſettled the Succeſſion; for the Supreme Power in this Nation being lodged in King, Lords and Commons, they may ſettle the Succeſſion, and make ſuch Laws as they ſee fit; and as this Supreme Power is not to be reſiſted on any Pretence whatſoever, ſo neither is the King to be reſiſted in the due Execution of thoſe Laws which have been made by the Legiſlature, or in the Adminiſtration of the Government, which he is entruſted with by the Conſtitution, ſo long as he does not exceed the Limits the Law preſcribes in the Exerciſe of his Power: We may ſafely aver the Doctrine of Non-Reſiſtance and Paſſive Obedience to the Supreme Power and to the King, who has the Executive Power, ſo far as his Prerogative is ſupported by Law, or by the Legiſlature; becauſe that reſiſting the Prince in this Caſe, is reſiſting the Legiſlature.

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But where a Prince takes upon him to ſubvert and deſtroy the Conſtitution in Church or State, as King *James* did, Reſiſtance then becomes neceſſary.

But notwithſtanding King *James* had begun, and appeared determined to finiſh the Ruin of Church and State, yet to his own Folly and Indiſcretion we muſt aſcribe it in a great Meaſure, that it was in our Power to reſiſt the Deſtruction he was bringing upon us. Had he not been infatuated to the higheſt Degree, we might have lamented the ſad Condition we were reduced to, but could never have retrieved the Misfortune: Had he not diſobliged every Claſs of Men in the Kingdom, our Reſiſtance had been vain. He was weak enough to fall upon the Clergy, the Univerſities, the Corporations, and even upon his own Fleet and Army at once, and render them all Malecontents; and when he had done this, refuſed the Foreign Troops the *French* King offered him to ſupport his Tyranny.

It is to the Weakneſs, or rather the Bigotry and Madneſs of that Prince, therefore, that we in a great Meaſure owe our being a free People at this Day; for as he had his Treaſury well repleniſhed, a good Fleet, a fine Army of Twenty Thouſand Men, and a Reſerve of as many Thouſand Foreigners as he pleaſed to accept of; what Service would our darling Doctrine of Reſiſtance have done us in theſe Circumſtances, if he had not done our Work to our Hands, and ſuffered himſelf to be puſhed upon ſuch Extravagancies by cunning treacherous Stateſmen, as rendered the very Fleet and Army his Enemies, which he had provided to enſlave us: Had the Military Gentlemen alone been politically careſſed, no Popiſh or *Iriſh* Officers or Soldiers forced upon them; had no Prieſts been introduced both into the Fleet and Army, of which he might have known they had the utmoſt Abhorrence (before the Seamen proceeded ſo far as to threaten to throw the Popiſh Fathers over-board); had he not been blinded by an unaccountable Zeal for Popery, it was impoſſible he ſhould have committed ſuch a Series of Blunders, as could end in nothing but his Ruin.

But before I leave this Doctrine of Reſiſtance, I cannot avoid taking Notice of a Set of Men, who make the diffuſive Body of the People, the Original of Power, and the laſt Reſort, whenever the Adminiſtration is not agreeable to their Taſte. They would have the Rabble inveſted with a Power of calling

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King, Lords and Commons to Account, who are, according to this Notion, but their Servants; for they hold, that whether the Government be lodged in one or more, whenever their Governors deviate, in their Opinion, from the general Good, and betray that Truſt which it is pretended the People once upon a Time conferred upon them; then they have an indefeaſible Right to reſume the Supreme Authority to depoſe the Governors, and put the Adminiſtration into other Hands.

But, were this admitted, there could be no ſuch Thing as a Government of any Duration in the World; for how inconſiſtent the People are, and how unqualified to judge what is for their own Good, or the Good of the Community, does not require much Sagacity to diſcover: And if this Maxim were eſtabliſhed in *Great Britain*, then would not the Supreme or Legiſlative Authority be lodged in King, Lords and Commons, as it is generally held to be, but in the Rabble; and conformable to this Notion, theſe Gentlemen tell us, that if their Repreſentatives conſent to Acts, which tend to reſtrain the People's natural or acquired Rights, or to abridge thoſe Privileges they have been poſſeſſed of for Time immemorial; that then their Repreſentatives betray their Truſt, and all ſuch Acts are void.

In Anſwer to which, it may be proper to conſider, that ſcarce ever any Law is made that does not, in ſome Reſpect, limit, reſtrain, or alter the People's Rights and Properties: And that ſome Acts affect the Majority in the tendereſt Points, and yet have ever been ſubmitted to: From whence it is natural to conclude, that this Notion of the People's being the laſt Reſort, and the Original of Power, has very little Foundation.

Were not the Supreme Legiſlative Power lodged in the King, Lords and Commons, would the People have ever ſubmitted to have been excluded from giving a Voice at an Election for Knights of the Shire, as a Majority were by the Statute of 8 *Hen.* VI. *cap.* 7? or would they have ſuffered ſome Parliaments to enlarge their Duration, and others to make themſelves perpetual, as the Parliament in the Year 1641 did, and thereby excluded all the Freeholders and Burgeſſes in the Kingdom from that ineſtimable Privilege of electing Repreſentatives for the future?

Can we ſuppoſe, that the common People would ever have conſented to Abundance of unequal Taxes, ſuch as the charging Lands at the Rate of 4 *s.* in the Pound in one County, and 18 *d.* in another? or that a Man who rents a Houſe at 20 *l. per Ann.* would be content to pay as much for his Lights as a Duke who has forty times as many, if they were not ſatisfied that theſe Things were done by the Supreme Legiſlative Authority; and therefore ought not to be diſobeyed or reſiſted? If I have any Notion of the Conſtitution of our Government, the King, Lords and Commons have an abſolute, diſcretionary Power, and are accountable to none: Whatever the King or Lords conſent to, binds themſelves and their Poſterity; and what the Commons in Parliament aſſent to, binds thoſe they repreſent and their Poſterity; and the whole Commonalty, King, Lords and Commons, may new-model the Conſtitution, and repeal and alter the Laws as they apprehend moſt conducive to the Safety and Welfare of the Kingdom; and though they ſhould be miſtaken in their Views, yet their Acts are binding: The People who elected them cannot repeal or alter ſuch Laws, for this good Reaſon, becauſe this is our Conſtitution; and for another as good, becauſe the King, Lords and Commons in Parliament muſt be ſuppoſed to underſtand the State and Intereſt of the Nation better than the inferior People do themſelves; and becauſe any Government is better than Anarchy, which we ſhall not be far from, whenever we admit the diffuſive Body of the People to be the Supreme Legiſlative Authority, or which is all one, to control and oppoſe King, Lords and Commons, when they imagine themſelves aggrieved.

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Another Obſervation that every one makes on this Trial is, That the Event was very different from what the Proſecutors expected. The Deſign of proſecuting the Doctor, was certainly to ſuppreſs all Murmurs againſt the Conduct of ſome great Men, to eſtabliſh a certain Junto in the Adminiſtration, and deter the Clergy from medling with Politicks; for many celebrated Divines, as well as the Doctor, ſtill ventured to preach up the Church's Danger, notwithſtanding the aboveſaid Vote to the contrary, for which it was thought fit to make one of the Clergy an Example: But had thoſe Gentlemen known the Bravery of the Man, or been acquainted with the true Church-of-*England* Spirit, which the Clergy manifeſted both at the Revolution and on this Occaſion, they would poſſibly have thought better of it.

For the Body of the Clergy, looking upon their whole Order to be ſtruck at in Doctor *Sacheverell*, adhered firmly to him. Doctor *Lancaſter* Vice-Chancellor of *Oxford*, accompanied him to the Houſe of Commons, when he was carried thither, and above an Hundred of the moſt eminent Clergymen about Town met him in the Court of Requeſts, among whom were ſeveral of the Queen's Chaplains; and the Queen, well ſatisfied there was a great deal of Truth in what the Doctor advanced, changed her Miniſtry ſoon after the Trial, and the Doctor was preferred about the Time: He was allowed to open his Lips again to that fine Living of St. *Andrew's Holbourn*, worth 8 or 900 *l. per Ann.* In the mean Time, the Doctor going from *London* to take Poſſeſſion of a Living a Gentleman preſented him to on the Borders of *Wales*, he was met, near all the Towns through which he paſſed, by Multitudes of People, from whence he received all the Honours they could pay him; but none did him greater Honours in this Triumphant Progreſs than the Univerſity of *Oxford*, of which he was a Member. This important Trial did not only occaſion a Change in the Miniſtry, but the Diſſolution of the Parliament, and the Choice of another of a very different Stamp: So that, how defective ſoever the Doctor's Sermons may be thought by ſome, never any Diſcourſe had a

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greater Influence. He carried his Point, and by thoſe very Sermons, which are ſaid to abound in Faults, he ſhewed he knew how to move and perſuade, not only a ſingle Audience, but a whole Kingdom; and there are certainly ſome Paragraphs in them that the greateſt Divines and Orators might have been proud of owning: Nor do I think him at all incapable of compoſing that admirable Speech he ſpoke in his Defence, how mean an Opinion ſoever ſome may have entertained of his Talents.

Biſhop Burnet's *Character of the Doctor.*

His Enemy, Biſhop *Burnet*, indeed, treating of Dr. *Sacheverell*'s Trial, *pag.* 537, 538, of his Poſthumous Hiſtory, ſays, That he was a bold inſolent Man, with a very ſmall Meaſure of Religion, Virtue, Learning, or Good Senſe: That his Sermons contained the moſt petulant Railings at Diſſenters and Low-Church-Men, and were wrote without either Chaſtneſs of Stile, or Livelineſs of Expreſſion: That all was one unpractiſed Strain of indecent ſcurrilous Language: That he made great Reflections on the Miniſtry; repreſenting, that the Church was in Danger, being neglected by thoſe who governed, while they favoured her moſt inveterate Enemies. That in his Sermon, at St. *Paul*'s in *London*, the Fifth of *November*, he gave full Vent to his Fury in the moſt virulent Declamation he could contrive upon theſe Words of St. *Paul*, *Perils from falſe Brethren*, in which he let himſelf looſe into ſuch Indecencies, that both the Man and the Sermon were univerſally condemned. He poured out much Scorn and Scurrility on the Diſſenters, and ſaid, The Church was violently attacked by Her Enemies, and looſely defended by her pretended Friends. That he animated the People to ſtand up for the Defence of the Church, and ſaid, He ſounded the Trumpet, and deſired them to put on the whole Armour of God: That the Party that oppoſed the Miniſtry did ſo magnify the Sermon preached at St. *Paul*'s, that Forty Thouſand of them were printed and diſperſed over the Nation: That the Queen ſeemed highly offended at it; and the Miniſtry looked on it as an Attack made on them, that was not to be deſpiſed: The Lord Treaſurer was ſo deſcribed (under the Name of *Volpone*) that it was next to the naming of him; ſo a Parliamentary Impeachment was reſolved on; though *Eyre*, the Sollicitor-General, and others, thought the ſhort Way, of burning the Sermon, and keeping him in Priſon during the Seſſion, was a better Method; but the more ſolemn Way was unhappily choſen.

A more equal Character of the Doctor.

I do not pretend to any great Intimacy with Dr. *Sacheverell*; but being employed in compiling the firſt four Volumes of State Trials, and receiving an Intimation, that there were ſome Omiſſions and Alterations in that of the Doctor, publiſhed by Authority, particularly as to the Republican Principles there advanced, and the ſcurrilous Language given him by ſome of the Managers; I went to his Houſe in *Holborn*, and enquired, If he could furniſh me with any Materials that would ſet his Caſe in a truer Light: He anſwered, That the printed Trial was no more his Trial than it was my Trial; intimating, That the Whole muſt be altered to do him Juſtice; and that the real Trial was preparing to be printed in *Holland*: But whether a Turn of the Times prevented his going on with that Deſign, or whatever was his Reaſon for ſuppreſſing it, we have not met with any other Trial, than that publiſhed by Authority, from that Day to this.

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All that I can ſay of the Doctor of my own Knowledge is, That he was a tall, fair, perſonable Man, and ſpoke gracefully: That no Man read Divine Service better than he did; and that he choſe to do this frequently at the Pariſh-Church of St. *Andrew*'s *Holborn*, of which he was Rector, to create in the People a juſt Veneration for the Service of the Church; and I have heard ſeveral excellent Diſcourſes from him in the Pulpit (at leaſt as far as I am capable of judging of a Diſcourſe): His Voice and Action were exceeding juſt, and ſuitable to the Place, as well as to the Audience to whom he preached.

The Doctor had a good Reputation at *Oxford*, as to his Parts, Learning, and Morals; and had ſome Perſons of Diſtinction under his Tuition at *Magdalen-College*, of which he was a Fellow: And it is obſervable there was nothing immoral proved againſt him at his Trial, after the ſtricteſt Examination had been made into his Life and Converſation. As to the Scurrility the Biſhop mentions in the two Sermons, for which he was impeached, the World muſt judge for themſelves: But thus much I may venture to obſerve, That theſe Sermons are far from being ſo ſcurrilous as the Biſhop's Hiſtory, where all Mankind, Friends and Foes, are moſt egregiouſly ſlandered and calumniated.

Further Remarks on the Doctor's Trial.

It has been the Opinion of many, That one great Reaſon of maintaining the Doctrine of Reſiſtance ſo ſtrenuouſly at this Time, was, to let the Queen know, That if ſhe would not ſubmit to the Dictates of the Whigs, ſhe would run the Hazard of being dethroned. It ſeems to have been a Maxim among ſome People, That whenever the Queen refuſed to be adviſed by Her Subjects (by whom they meant the Whigs) they were impowered by the *Original Contract*, and the Laws of the Land, to depoſe her: And, indeed, if we may credit this Hiſtory of Biſhop *Burnet*'s, he told her ſo not long after; which was, no doubt, a ſufficient Reaſon for the Queen's changing Hands. What Prince would not have done it on ſuch an Intimation? She could not, after this, avoid ſuſpecting, that this Doctrine was eſpouſed, not with an Intention to juſtify the former Revolution, but to make Way for another; or, at leaſt, to exclude her from the Adminiſtration, and place it in the Triumvirate above-mentioned: By which Scheme, ſhe would have become a meer Cypher, and her Name only uſed to ſupport their Uſurpation.

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The Trial of DANIEL DAMMAREE, Waterman to the Queen, for *High-Treaſon*, at the *Old-Baily*, *London*, on the 18th of *April*, 1700. 9 *Annæ*.

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Dammaree's Trial.

The Indictment.

THE Priſoner was indicted by the Name of *Daniel Dammaree*, of St. *Clement Danes*, in the County of *Middleſex*, Labourer, of High-Treaſon, in conſpiring to levy War, and actually levying War againſt the Queen, on the firſt Day of *March*, in the 8th Year of Her Reign, at the Pariſh of St. *Clement Danes* aforeſaid; aſſembling and marching with a great Multitude of People, to the Number of 500 Perſons, armed and arrayed in a Warlike Manner, with Colours flying, Swords, Clubs, and other Weapons, offenſive; and defenſive; againſt the Queen's Peace, and the Form of the Statute in that Caſe made and provided.

Tolboy's Evidence.

A Jury being ſworn, and the Witneſſes for the Crown called, *Thomas Tolboy* teſtified, That on *Tueſday*, the laſt of *February*, being the Day before the Meeting-Houſes were pulled down, he paſſed through the *Temple* in the Evening, and ſaw a great Number of People aſſembled there, who had attended Doctor *Sacheverell* to his Trial and back again, and heard them talk of pulling down Mr. *Burgeſs*'s Meeting-Houſe; ſome, however, were for deferring it till the next Day, and others, till they ſaw the Succeſs of the Trial: But which they reſolved on, he did not know for he made no Stay there.

Orrel's Evidence.

Edward Orrel teſtified, That he was at *Leonard*'s Coffee-Houſe, on the firſt of *March* in the Evening, where News was brought that the Mob were pulling down Dr. *Burgeſs's* Meeting-Houſe; that he thereupon went thither, and was in the Meeting-Houſe three or four Times that Night, and ſaw them pulling down the Pulpit, Pews, *&c.* That he went from thence to *Fetter-Lane*, where he ſaw another Mob about ten o'Clock, demoliſhing the Inſide of *Bradbury*'s Meeting-Houſe, and carrying the Materials into *Holborn*, burnt them there: From thence he went to *Lincoln's-Inn-Fields*, where he found the firſt Mob burning the Materials of *Burgeſs*'s Meeting-Houſe; and heard ſome of them ask, which was my Lord *Wharton*'s. Others ſaid, St. *James*'s, and others, the City, the Bank: That they divided themſelves, and went from thence, ſome towords the Arch, but more towards *Powis*-Houſe: That he ſaw *Dammaree* the Priſoner, in the Queen's Livery, with his Badge, go with thoſe towards *Powis*-Houſe in *Queen-ſtreet*; and *Dammaree* ſaid, *Damn it, We will have them all down.* Some were for going to the Meeting-Houſe in *Wild-ſtreet*, but another ſaid, That's a Hen-Rooſt, the other is worth Ten of it: And *Dammaree* thereupon ſaid, *I will lead you on Boys*; *Huzza! High Church, and* Sacheverell! *God damn them all*; *We will have them all down:* And ſome of them turning off to *Wild-ſtreet*, *Dammaree* led the reſt through *Queen-ſtreet*, and once in ten or twelve Yards, turned about, crying *Huzza! Why don't you come on, Boys, to* Drury-Lane? and he led them thither; but the Witneſſes never ſaw him afterwards: That he ſaw a little Fellow with a Pick-Ax, endeavouring to break open the Meeting Houſe Door in *Drury-Lane*, working at the Bottom of it; when another came up with a Hatchet, and ſaid, *Damn you, you break open a Meeting-Houſe! You don't know how*, and with two or three Strokes of his Hatchet, he broke through it: That he (the Witneſs) then went into the Meeting-Houſe with them, and asked for *Jolly*, the Queen's Waterman; and one ſaid, he was gone to the Back-Door, and another, that he was gone to Lord *Wharton*'s; but he never ſaw him afterwards.

Joſeph Collier teſtified, That he ſaw *Dammaree* bring the Branch, or great Candleſtick from *Burgeſs*'s Meeting-Houſe, to the Fire in *Lincoln's-Inn-Fields*, and that he carried it three Times round the Fire, in a ſort of a Proceſſion, huzzaing; and then threw it in.

Still's Evidence.

John Still, ſaid, he ſaw the Priſoner hollowing in the Alley that leads to *Burgeſs*'s Meeting-Houſe; and *John Mitchel* depoſed, That he ſaw him hollowing, and throwing up his Hat, about the Fire in *Lincoln's-Inn-Fields*.

Morgan's *Evidence.*

Francis Morgan teſtified, That *Dammaree* was at the Fire in *Lincoln's-Inn-Fields*, in his Waterman's Coat, encouraging the Mob: That he walked round the Fire, and threw ſeveral Things in; and he (the Witneſs) telling them the Guards were coming, ſome of the Mob ſaid, *Damn the Guards and the Parliament too: We are ready to face them all*; and he ſaw the Doors of the Meeting-Houſe thrown into the Fire, after they were carried about it in Proceſſion.

Eaton depoſed, he ſaw *Dammaree* and ſome Others, force a Soldier that was at the Fire, to pull of his Hat.

The Evidence for the Queen being cloſed, Mr. *Darnell*, the Priſoner's Counſel, made the following Obſervation on it, *viz.*

Obſervations of the Priſoner's Counſel on the Evidence againſt him.

As this Indictment charges the Priſoner with levying War, there muſt be a Proof of ſuch Facts as do amount to a levying of War. The Witneſſes for the Queen have ſworn, that the Priſoner was at the Fire in *Lincoln's-Inn-Fields*, and that there he did hollow and throw up his Hat. I believe that muſt be agreed, for my Inſtructions are, that he did ſo, and our Witneſſes will all ſay as much. But if that were all, then the Witneſſes againſt the Priſoner muſt be equally Guilty: For the Chief of them, *Orrell*, ſays, he was forced to pull off his Hat; and it was known to be the Practice of the Mob that Night, to make all that paſſed by, pay Obedience, as they called it, to Dr. *Sacheverell* and High Church. But my Lord, that which I humbly offer on behalf of the Priſoner, is, That unleſs he were in the Intention of pulling down the Meeting-Houſes in general, and did ſomething in Execution of that general Intention, it will not be a levying War againſt Her Majeſty. My Lord, it is obſerved that this Man was at the

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the Fire in his Coat and Badge, and we think a great deal may be inferred from his Habit, that he was not in ſo evil an Intention as levying War againſt Her Majeſty, whoſe Servant he was ſo remarkably diſtinguiſhed to be; but a Man, who had ſuch a vile Deſign to execute, would dreſs himſelf in ſuch a Manner as would beſt conceal him: Therefore we think his being preſent at the Fire, and hollowing, and the reſt of the Evidence againſt him, is not enough to prove him in that general Intention, and the Execution of it.

The Gentlemen of the other Side thought it neceſſary to give ſome Evidence of a Deſign to pull down the Meeting-Houſes in general, and for that purpoſe, proved that a great Number of People were got together, the Night before, in the *Temple* Walks; where there was a Diſcourſe by ſome of them, that they would pull down Mr. *Burgeſs*'s Meeting-Houſe; but who thoſe People were, I don't hear, nor do they by any means bring that Home to the Priſoner. And it is impoſſible for us to give an Anſwer to that Evidence; for to ſay the Mob ſaid ſo, is to ſay that Nobody ſaid ſo; and no Witneſſes can be falſified on ſuch an Evidence, for who that Mob were, is not explained. And my Lord, if there was no Intention, or no general Intention, to pull down Meeting-Houſes, we apprehend there can be no levying of War: If the Fact were ſudden and accidental, or only intended againſt a particular Meeting-Houſe, we muſt ſubmit that to your Lordſhip, whether, if he were Guilty of that Fact, it would amount to High-Treaſon. We think all the Caſes go on this Foundation, that there muſt be an *Intention* to commit ſuch like Offence in general; and an Intention to commit it to the particular Injury of a Perſon, or Place, will not be ſufficient. The Witneſſes againſt the Priſoner ſay, there was an Intention, or Diſcourſe, of going to Mr. *Burgeſs*'s Meeting Houſe, and no Talk of any other; but when they were there, then they went to a Second, and on to a Third: But the original Intent by the Mob, doth not appear to be more than to go to Mr. *Burgeſs*'s Meeting-Houſe, and to pull that down, and therefore is not a levying of War.

The Caſe in Print, in the ſecond *Anderſon* 66, where the People in *Oxfordſhire* conſpire to aſſemble together, and move others to join them, and to pull down Incloſures, was attended with this Circumſtance, That it was a general Intent; and, when they were got together themſelves, they perſuaded others to join with them: They conſpired to go to ſeveral Gentlemen's Houſes, and to take Arms and Horſes, and to kill ſeveral Gentlemen, and then to come to *London*; and their Intent was general, not to pull down any particular Encloſure, but all of them for the Enlargement of Highways and Commons, and ſo to reform that which the Law ought to do.

So in the ſame Book, in the Caſe of the Apprentices of *London*, 2 *Anderſon*, 4, 5. For reducing the Price of Victuals in general, they agreed to break open the Priſons, to releaſe ſome of their Companions, and to go to the Lord Mayor's Houſe, and to kill him and burn his Houſe, and then to hreak open two other Houſes near the *Tower*, where there were Arms for three hundred Perſons: Then to diſperſe Libels, and to perſuade other People to join with them.

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There is a later Caſe in my Lord Chief Juſtice *Keyling*'s Reports, which was the Intention of pulling down Bawdy-Houſes; there they took upon themſelves Regal Authority, and would not take the Courſe the Law preſcribed: But, my Lord, thoſe Caſes are attended with many worſe Circumſtances than this is, for there they aſſembled with Arms; there they had one they called Captain to lead them, with his Sword drawn; they had Aprons, and ſuch Things on Staves, which they called Standards and Colours, and, in a Military Way they marched, and did Pull down ſeveral Houſes, which they called Bawdy-Houſes: That caſe is reported in my Lord *Keyling*'s Reports, fol. 70. and was adjudged levying of War, becauſe the *Intent* was general, and becauſe they took upon themſelves to do that which is the Buſineſs of the Queen, and the Laws of this Kingdom only to do. But, my Lord, in that Caſe there are two Perſons who ſeem to have as great a Charge of Guilt upon them as the Priſoner at the Bar, and were diſcharged from thoſe Indictments for levying War, by the Opinion of all the Judges. One of them was found to be at the Meeting where the Diſcourſe was of pulling down theſe Bawdy-Houſes, that is *William Green*, that he went along with them, caſting up his Cap, and hallowing, with a Staff in his Hand; but becauſe there was not any particular Act of Force found to be committed by him, he was diſcharged. Another, one *Beddell*, was found among the Mob, and, when the Guards came to diſperſe them, and he was purſued by one of the King's Soldiers, he called out to his Fellows to face about, and not to leave him. This, we think, is at leaſt as ſtrong an Evidence againſt them as has been given againſt the Priſoner at the Bar; and yet they were both diſcharged by the Opinion of all the Judges.

My Lord, where a Fact is found, which Fact is an aiding and aſſiſting, we think it can't be a Defect in the finding of the Verdict, that he did not aid and aſſiſt. The Facts they found were only Inſtances of aiding and aſſiſting; and if theſe Inſtances will be ſufficient, then the Court were as fully poſſeſſed of them, as they are now upon this Evidence.

My Lord, as to the Fact, we think we have a very good Caſe of it: We have Proof, every Hour of the Day, of the 1ſt of *March*, where the Priſoner was, from Morning till Night. That he was at the Conſult the Night before, with the Mob, I think, is not pretended on the other Side. On the Day in the Indictment, we ſhall ſhew he was, from Eight or Nine in the Morning, in the Company of ſeveral Perſons, till about Ten at Night, or later: That at that Hour, he was at an Alehouſe in *Water-Lane*, in *Fleetſtreet*, where a Gentleman's Servant came in, and told the Company there was a Fire; the Priſoner ſtarted up, and thought it had been in the

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the Houſe, but finding it was not, he went into the Street; there it was reported, That Mr. *Burgeſs*'s Meeting-Houſe was pulled down and burnt. In about an Hour after that, he came along *Fleet-ſtreet*, and, at *Hercules-Pillars-Alley*, near the *Temple*, there was a Sempſtreſs ſtanding at her Door, with whom, the Priſoner ſtaid talking ſome Time, and, whilſt they were together, ſeveral People came by, and ſaid, that *Burgeſs*'s Meeting-Houſe was quite down, and burnt: From thence, he went up *Chancery-Lane*, and through *Lincoln's-Inn-Fields*, to ſee what was the Matter, and found, as it was reported, that it was all burnt. The Mob that were then about the Fire laid hold of him, and uſed him as they did all other People that came by, and made him pull off his Hat, and hollow, *High Church and* Sacheverell! If not, they muſt have a Knock on the Pate. When they found he was much in Drink, they puſhed him about, and ſaid, He ſhould be their Captain; and then they hollowed, and ſaluted him Captain: But nothing of this came from himſelf, but they gathered about him, and there their Captain was in the Middle, more like to ſuffer than command. My Lord, the Evidence againſt him don't pretend to charge him to be in *Drury-Lane*, only that he went that Way with them. Now as to the Intention, which they would ſuppoſe the Priſoner had, of pulling down all the Meeting-Houſes, I ſay, my Lord, a Man would not, from being a Captain, and from ſo great a Zeal to the Cauſe, deſert his Companions, even in the firſt Inſtance in which he could ſerve them: For, I ſubmit it, Whether there is any Evidence that he was in, or at any one of the Meeting-Houſes, after the Fire in *Lincoln's-Inn-Fields*: And if he was ſo forward, as the Witneſſes ſeem to charge him to have been, ſurely he would have gone to *Drury-Lane* at leaſt, and done ſome Act of his Authority; but that is not proved. And, my Lord, of our Side, we ſhall prove, that he did not go to *Drury-Lane* but that, at Twelve o'Clock, he was in Bed at his own Houſe in *Lambeth*: So that there will be no Time to ſuppoſe him guilty of doing any thing after his entering upon his Office, but only that he went off as ſoon as he could.

There was one of the Witneſſes, my Lord that ſaid, he was in *Lincoln's-Inn-Fields* about Eight or Nine o'Clock, and ſaw the Priſoner there; now we ſhall ſhew, that till half an Hour after Ten, he was engaged in Company in *Water-Lane*: But there is a Circumſtance in our Evidence, which, we think, may reconcile that; for we can prove, that at Doctor *Burgeſs*'s Meeting-Houſe, there was a Waterman, in his Livery and Badge, who was buſy in pulling down, and carrying away the Materials; but the Priſoner can't be ſuppoſed to be the ſame, for that Perſon wore his own Hair, and the Priſoner has worn a Wig many Years: And, my Lord, if my Inſtructions are true, we have Perſons that knew the Priſoner before, that will take it on their Oaths, that it was not *Dammaree*; if ſo, then the Witneſſes that prove him to bring out the Branch, we hope, will be reconciled by this, that there was another Man in the ſame Habit. It is an eaſy Thing for a Boy, in a Croud, to make ſuch a Miſtake; for that was the Reaſon why he knew it to be *Dammaree*, becauſe he had his Waterman's Coat and Badge on: That Man is not found out; but we hope we ſhall not ſtand in his Place.

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My Lord, another Circumſtance we have of the Innocence of the Priſoner, is, that the next Morning, when he got up, he went to his common Buſineſs, to Work upon one of the Queen's Barges, and there, I think, he was, when the Meſſenger came to take him: He was not under the leaſt Apprehenſion that he had done any Thing that would make him Guilty of a Crime, eſpecially ſo great a one as this he is charged with: If he had, he would have taken ſome Care of himſelf; but his Innocence was all the Protection he made uſe of. We hope our Evidence will ſatisfy you Lordſhip and the Jury, that ſome of the Witneſſes againſt him were miſtaken, and ours will ſhew that he withdrew from the Fire as ſoon as poſſibly he could; and we ſhall call ſome other Witneſſes to ſhew that he is a Man of another Character, than to be guilty of ſuch an Offence. The Gentlemen of the other Side, ſaid, he was doubly obliged to bear Allegiance to Her Majeſty; we own it, that he was Her Waterman; that he always behaved himſelf dutifully towards Her Majeſty; that, on other Occaſions, he has expreſſed his Abhorence of any Thing of this Nature. My Lord, if he is of a good Character, zealous for the Government, and has always expreſſed himſelf ſo, no Man, that is of that Character, can be guilty of ſuch a Crime, than which there can be none greater, to raiſe War againſt Her Majeſty, in the Bowels of the Kingdom; and the Greatneſs of the Charge is that which, we hope, will make your Lordſhip and the Jury require the more exact Proof. We will call our Witneſſes to make out our Caſe, and then ſubmit it to your Lordſhip and the Jury.

The Witneſſes for the Priſoner being called, *Thomas Allen* teſtified, That on the firſt of *March*, the Day the Meeting-Houſes were pulled down, he was with the Priſoner *Dammaree* from Ten in the Morning till Twelve at Noon; and that the Priſoner was then engaged in taking an Apprentice from *Chriſt's-Hoſpital*.

Stephen Pink depoſed to the ſame Effect, and that he left him with Mr. *Wood*, at the *Cock* in *Amen-Corner*, at 2 or 3 o'Clock in the Afternoon.

Wood teſtified, That he was with *Dammaree* on the firſt of *March*, from Nine in the Morning till Ten at Night, drinking from one Houſe to another; and that the laſt Ale-houſe they were at, was at the *Bell* in *Water-Lane*, where one *John Light* a Poſtillion came in about Ten, and ſaid there was a Fire in the *Strand*, and thereupon *Dammaree* ſaid he would go and aſſiſt a Gentlewoman of his Acquaintance that lived in the *Strand*: That he (the Witneſs) went with *Dammaree* as far as *Temple-Bar*, and there they met a great Mob, which forced them up *Sheer-Lane* into *Lincoln's-Inn-Fields*, ſaying to *Dammaree*, *Damn*

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you, you are the Queen's Waterman, you ſhall go with us, or we will tear you to Pieces: And *Dammaree* deſired they would not knock him on the Head, and he would go with them, That they went with them into *Lincoln*'s-*Inn-Square*, and then were forced through a Wicket into the Street that leads to Great *Lincoln's-Fields*, and there he (the Witneſs) left them; but they forced *Dammaree* to go with them to the Fire.

Fucard who kept the *Bell* Ale-houſe at *Water-Lane* End depoſed, That *Dammaree* came to his Houſe at Two in the Afternoon on the firſt of *March*, and ſtaid there till half an Hour after Ten, and then went away very much in Drink; but he heard nothing of a Fire.

Charles Biſhop depoſed, That *Dammaree* ſtaid with him at the *Bell* Ale-houſe, on the firſt of *March*, till half an Hour after Ten at Night, and went away much in Drink; that News was brought in of a Fire about Nine, an Hour before he went away.

John Light depoſed, That he brought the News of the Fire into the *Bell* Ale-houſe about Nine at Night, the firſt of *March*, and *Dammaree* ſtaid there afterwards till between Ten and Eleven.

Ward depoſed, He ſaw *Dammaree* at Mr. *Giles*'s Shop in *Fleet-ſtreet*, at half an Hour after Ten, on the firſt of *March* at Night and he was ſo drunk that he reeled; and the People ſaid there was a Fire, the Inſide of *Burgeſs*'s Meeting-houſe was burnt, and he ſaw ſome People carry the Irons by, that ſupported the Pulpit.

Mrs. *Giles* teſtified, That *Dammaree* called at her Shop againſt St. *Dunſtan*'s Church, after Ten, the firſt of *March*, and asked what was the Meaning of the Tumult, and was told *Burgeſs*'s Meeting-Houſe was burnt: That he ſtood talking with her a good while, at the Shop Door; ſhe remembred him well, becauſe he had the Queen's Coat on; and being asked, how ſhe came here as a Witneſs? ſhe anſwered, that hearing ſuch a Man was taken up, ſhe ſaid to ſeveral Neighbours, it was impoſſible he could be at the pulling down the Meeting-Houſe, for that he was at her Door at that Time, and came from the City; and ſome of *Dammaree*'s Friends hearing of it, ſubpœna'd her: That a great many other People came by the Shop at the ſame Time, crying out, Who are you for? and thereupon *Dammaree* ſaid, he was for the Queen; but he ſeemed to be pretty much in Drink.

Cummins teſtified, That he ſaw *Dammaree* at the Fire in *Lincoln's-Inn-Fields* about Eleven at Night; that he was very drunk, and the People pulled him about, and made Sport with him, and one ſtruck him, becauſe he did not pull off his Hat.

Mary Reading, and *Iſabel Prince* depoſed, that it was a little Waterman, in his own black Hair, that threw the Sconce into the Fire at *Lincoln's-Inn-Fields*, and not the Priſoner; and, when the Fire was almoſt out, they ſaw the Priſoner going towards it, and ſpoke to him, and he kiſs'd the laſt Witneſs upon her ſaying, *here comes the Queen's Waterman.*

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Rowland Walker depoſed, That he carried *Dammaree* croſs the *Thames* from the Stairs at *Strand*-Bridge, to his Houſe at *Lambeth*, on the Firſt of *March* at Night, at half an Hour after Eleven, and he was very much in drink.

Hales, and *Harbin* teſtified, They met *Dammaree* in the *Strand* the ſame Night after Eleven: That he was in drink and going towards *Strand*-Bridge.

Then ſeveral Witneſſes appeared to his Reputation, and ſaid, He was well-affected to the Queen and Government, and of a peaceable Diſpoſition; and one ſaid he heard him ſay, He wiſhed Dr. *Sacheverell* had never preached that Sermon, and then there had been none of this Trouble: And others ſaid, He was as ſerviceable as any one in raiſing Men for the Queen, when he was Maſter of the Waterman's Company.

Obſervations of the Priſoner's Counſel on the Evidence.

Mr. *Darnel*, in his Obſervations on the Evidence given for the Priſoner, ſaid, This Caſe comes far ſhort of that in the Lord *Keyling*'s Reports; for there was plain Hoſtility, a Captain with a Sword drawn, Colours, two Meetings to conſult, and a Reſolution taken, a reſiſting and wounding the Conſtable, and ſtriking the Officer of the Guards, and their Intention to pull down Bawdy-Houſes, which might be any Houſe they thought fit to call ſo. As for the Caſe of *Oxfordſhire*, it is plain, there was an arming themſelves, they had put on Armour to act offenſively, as well as defenſively; they propoſed to come to *London*, and to have others join with them, and that Caſe was adjudged High-Treaſon. For the general Intention to pull down Incloſures, Where there is any Reſolution, that theſe great Tumults amount to High-Treaſon; it is on this Foundation, that the Deſign is general, and is an exerciſing of a Regal Authority, which no Body but Her Majeſty ought to make uſe of. It is ſaid in *Meſſenger*'s Caſe, that the Intent muſt be ſuch, and that ſuch Intent muſt appear by ſuch Proof as will ſatisfy the Jury. Now, how do they offer to prove the Intent of this Man? If there is any Thing to prove it, it is ſubſequent to the pulling down the firſt Meeting-Houſe; for it is plain, he was not there 'till the Deſign was ſo far executed, and the Fire had been made an Hour before he came: Now, if he comes there, and hollows and rejoices at it, that cannot make him guilty. I agree, that if any Number of Perſons are going to commit High-Treaſon, and a Man meets them, and joins with them in the Execution of that Fact, he is guilty; but if he be ignorant of their Deſign, and hollows and rejoices with the Crowd, that will not make him guilty: And in this Caſe it appears, that every Body that paſſed by the Crowd that Night were conſtrained ſo to do; but where ſuch Perſon, who is got into ſuch a tumultuous Aſſembly, doth get off as faſt as he can, this cannot be High-Treaſon, or any Crime whatſoever. If the Priſoner had gone to *Drury-lane*, and they had ſhewn that he did any Thing there, we ſhould have had a harder Caſe than we hope we have; but we think there is no Proof of the Intention of this Man to commit thoſe Facts

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of pulling down the Meeting-Houſes in general, and of aſſiſting in the Execution of that Intention.

My Lord, if our Witneſſes (whoſe Credit ſtands unimpeached) be believed, it is impoſſible he could be concerned in this Deſign, or the Execution of it, or know any Thing of it till it was executed: For it don't appear, that, on any of the Days when the Mob were together, he was among them, or that he acted any Thing 'till after the Meeting-Houſe was pulled down, and the Fire made. We have ſhewn where he was all that Day, and that it was near Eleven when he came to the Fire. I think we have ſhewn by the Waterman that carried him Home, that there was not Room for him to bear any Share in this Outrage; for between the Time of his coming to the Fire, and going Home by Water, there is no Room for him to do any Thing more than to go between thoſe Places. There is no Proof that he did any Thing, but what the Mob in a Manner forced him to do; and perhaps it might have coſt him his Life, in ſo tumultuous an Aſſembly, or, at leaſt, ſome bodily Harm, if he had done leſs.

Mr. Sollicitor in his Reply to the Priſoner's Counſel ſaid.

The Reply to the Priſoner's Defence.

My Lord, there are two Points to be conſidered in this Caſe: Firſt, Whether this Tumult be a levying War, and High-Treaſon? And in the next Place, how far the Priſoner may be concerned in it? Whether what he has done, has made him equally guilty with the others, ſuppoſing the general Deſign, and the Execution of it, to be High-Treaſon?

We take it, that this Deſign to pull down theſe Meeting-Houſes, was a general Deſign; and being a general Deſign, and done upon Pretence of Reformation, and in Defiance of the Law, that this is High-Treaſon, and levying War; and Facts of this kind, in all Ages, have been adjudged ſo. The general Deſign is proved by what followed, by the Action, by pulling them down; for we have proved that four were pulled down, and that there was an Intention, or Declaration, that they would pull down Meeting-Houſes. What is this Deſign againſt? It is againſt the Queen: It is levying War within the Realm, which I take to be a material Word in the 25th of *Edward* III. It is levying War againſt Her Sovereignty, Her Power and Authority, in Matters which She, either as concerned in the Legiſlature, or in the executive Power of the Government, may reform and correct. The taking Arms in Defiance of any Law, or to correct any Abuſe, or to deprive the Subject of the Benefit of any particular Act of Parliament, is levying War and High-Treaſon; and ſo adjudged by the Statute of Queen *Elizabeth*. The Caſe of the ---- ---- was long before that Time; the Caſe of the Incloſures was a private Intereſt; yet the getting a Number of People together, in order to throw down all Incloſures, is adjudged to be High-Treaſon; and that Reſolution has always been affirmed. That is the Intereſt of Private Perſons, and therefore will ſhew what they inſiſt on of the other Side againſt the Queen, is of no Conſequence; for, if it was levyed againſt Her Authority, with Submiſſion, that is High-Treaſon: The taking up Arms againſt it, though there was no immediate Intention againſt Her Perſon, or to deſtroy Her. Indeed it has been common to lay a Deſign to compaſs and imagine the Death of the Queen, and the Overt-Act of the Treaſon has been the Proof of that Deſign; there the compaſſing is the Treaſon, and the Overt-Act is only the Proof, and therefore a Deſign muſt be laid in that Caſe. But in Caſes of this Nature, the levying War is the Treaſon, and therefore the proving the levying War, is ſufficient, without laying any Deſign to compaſs or imagine Her Death. Now that this is againſt the Queen, and Her Sovereignty, is moſt plain, becauſe it is certain theſe Meeting-Houſes are tolerated by Law: The Diſſenters are indulged in the Exerciſe of the Worſhip of God, in their own Way, by the Act of Parliament: That Act of Parliament can be taken away by nothing but an equal Power; in which the Queen muſt give Her Aſſent, and it muſt have Her Concurrence. The Queen has the Adminiſtration of Juſtice under her Care, therefore taking up Arms to deſtroy Meeting-Houſes in this Manner is levying War againſt the Queen, and levying War within the Realm; to invade that Right which by the Laws of the Kingdom theſe People are entituled to; for the Law has given this Right. Now, to take up Arms to violate that Right, is High-Treaſon, and is a ſtronger Caſe than any that have been mentioned and agreed to by Law. The Caſe of an Incloſure is a private Intereſt; the taking Arms to enlarge a Highway is ſo; to deſtroy Bawdy-Houſes is ſo; to take up Arms to remove a publick Nuſance, which ought to be the Particular Care of the Government, that is levying War.

They have inſiſted upon the Statute of the 13th of *Elizabeth*, which they uſe as an Argument to ſhew that this was not Treaſon within the Statute of *Edward* III. but that Act was to make a Conſpiracy to levy War, High-Treaſon. But then how ſtood the Caſe of the Incloſures at that Time? Several People conſpired to throw down Incloſures, and that was adjudged High-Treaſon, becauſe it was a Conſpiracy to levy War; and how could that be High-Treaſon, if taking Arms to throw down Incloſures were not ſo? We take it that the Caſe of *Anderſon*, is full in Point; and theſe Caſes are affirmed by the Judges in the Caſe of *Meſſenger*: So that this is the greateſt Authority, and never to be ſhaken. They ſay the Caſe in *Anderſon* is a private Opinion; it is the Opinion of the Two Chief Juſtices; and the Maſter of the *Rolls*; the others are the Opinion of all the Judges: So that it is ſuch an Authority as never can be ſhaken.

This ſhews the Foundation that there is for this neceſſary Proſecution, that People may ſee, that it is not in the Power of every Man, according to his own Fancy, to find Fault with the Government, and alter the Laws, and deprive the Subject of any Benefit he is entitled to by Law. It is an Invaſion of the Royal Authority; they may, by the ſame Reaſon,

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Reaſon, fall upon a Man's Perſon, as they may pull down a Man's Houſe: And Things of this Nature muſt run into endleſs Confuſion, and none can be ſafe, unleſs People, that are thus Guilty, be brought to Puniſhment.

Theſe Authorities then being ſo ſtrong, we hope, as the Caſe ſtands, on the Evidence for the Queen, that the Priſoner has been proved Guilty of the Charge in the Indictment; for that there was a general Deſign, appears by what was done in the Execution of it. The only Queſtion is, Whether this Man was privy to any precedent Deſign? And, for this, I rely on the Lord *Eſſex*'s Caſe, in *Moor*'s Reports, which was ſettled by all the Judges in *England*. I ſay, that it is not neceſſary to prove any ſuch previous Intention, any more than if a Man ſhould be ſo bold as to murder a Judge on the Bench. Muſt you prove that there was any Deſign? Don't the Blow that was given ſhew the Deſign? And is it not High Treaſon in caſe of counterfeiting the Coin? Muſt you prove an Intention? No; the Treaſon is in the Fact, and not in the Intention: Where it is in the Intention, as compaſſing the Death of the Queen, there muſt be an Intention proved; but where it is in Fact, where the Fact is Treaſon, no previous Deſign is neceſſary to be proved, in any Caſe whatſoever: The Fact it ſelf is the Treaſon, and ſpeaks the Deſign; and the Man that commits Treaſon, muſt do it with a Treaſonable Intention. And, in the Lord *Eſſex*'s Caſe, it was adjudged that my Lord *Southampton*, who joined with him in that Fact, which was adjudged levying War, was Guilty of the ſame Treaſon, though he did not know of the Deſign of the Lord *Eſſex*, but thought he meant only to remove ſome particular Enemies of his from the Queen.

They ſay, if he was there, he was only there by Force: As to his coming there, I think it is fully proved as can be; but, ſay they, it was not he that threw the Sconce into the Fire, for he was at another Place at that Time; for that was thrown in at Nine or Ten o'Clock, and he was then elſewhere. I wonder this ſhould be inſiſted upon, it being only a ſmall Variance in Time; and as he was obſerved to do the Fact, it is not material as to the Hour: Therefore, unleſs what the Women ſay is an Anſwer to that Evidence, it ſtill remains unanſwered; and as to what they ſay, we muſt ſubmit it, whether it can be believed; whether they deſerve that Credit, whether a Man that ſtood by, and ſaw every Thing that paſſed, and followed him up the Street, to the Fields, whether they can deſerve that Credit that this Man does; for what they ſaw was only at the Fire. They agree a Waterman did it, but it was a ſhort Man in black Hair, and they ſaw him only by looking under ſome People's Arms; they could not diſcern ſo particularly as this Man, that ſaw him come out of the Houſe, and followed him: But whether he was concerned in that Act or no, is not material. His going from the Fields, and hollowing the People to *Drury-Lane*, is a Matter they have not anſwered; they have given no Evidence to anſwer that; and if that were ſo, it is a ſufficient Evidence of his levying War; that is enough, his ſaying he would lead them, and encouraging them to go with him; that, no Doubt, will be a full Evidence, joined with his being at the Fire, which is proved by five or ſix Witneſſes; and this is contradicted by nothing, but ſaying he did it by Force; and if that were Fact, then certainly he would not be guilty: But on what does this depend? On two Witneſſes; on *Wood*, whom, I think, no body can believe, for he contradicts himſelf in coming to the Place, and going from it again; and how defective he was in every Point, I doubt not, your Lordſhip and the Jury have obſerved. But when they call their other Witneſs, they make it clear; for, if any Credit is to be given to their other Witneſs, *Wood* is not to be believed; for he ſays, the Priſoner left the Alehouſe to ſerve a Friend in the *Strand*, and that he went along with him; but this is contradicted by the other Witneſſes, and it appears, that he was not with him in *Fleet-ſtreet*. *Cummins* ſays, the Priſoner was drunk, and thruſt about by the Mob from one to another; but he don't prove he was under any Force: If he had, they would have treated him otherwiſe; but they are continually juſtling and playing with one another; and though other People were threatened, that don't prove that he was. They ſay he was drunk; that is no Excuſe at all. I was willing the Jury ſhould have all the Circumſtances before them; and therefore joined in asking that Queſtion; but it cannot be material, nor is he more or leſs Guilty, whether he was drunk or ſober: So that we take it, there is no Evidence that he was under any ſuch Force, as put him under a Neceſſity, for his own Preſervation, to join with the People in this Tumult. If he was not under an abſolute Neceſſity, he cannot be excuſed: So that it is plain, they have not anſwered that Matter at all. And as to the two Women, that never ſaw him before, but met him coming back to the Fire; and as to the Proof, That he was at Home at Twelve o' Clock, that is no ways inconſiſtent with our Evidence. The Matter of Reputation is no ways to be conſidered in this Caſe: I would not ſay any Thing more, but you hear what was the Noiſe of the Mob, and that Cry and Hurry that was made on this Occaſion, was in Defiance of the Juſtice of the Nation, which was then carrying on in the moſt ſolemn Manner. But we ſubmit it to your Lordſhip, that this Fact, this Deſign, executed in this Manner, is plainly levying War and High Treaſon; and the Priſoner at the Bar, by the Evidence that has been offered, is Guilty of the Fact charged againſt him in the Indictment.

The Chief Juſtice afterwards gave his Directions to the Jury and ſaid,

It is unhappy, indeed, that theſe Miſtakes are propagated; but it is monſtrous to ſee how People may be miſled; that they ſhould fall foul on the Diſſenters, and pull down the Meeting-Houſes, when they are rather the Objects of Pity than Anger. If they are not ſatisfied with the Eſtabliſhed Church, which is the beſt in the World, and they loſe the Benefit

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nefit and Advantage of that excellent Conſtitution, they are to be pitied for their Miſtake: But why ſhould any one be angry becauſe they do a Prejudice to themſelves? But this Matter having been under the Conſideration of the Legiſlature, and there being a Law that allows them the Liberty to ſerve God in their own Way; ſince that Liberty is allowed them, why ſhould any Body be concerned that they enjoy it? And why ſhould their Meeting-Houſes be pulled down? But Dr. *Sacheverell*, at that Time (I would not reflect on him; he has undergone a Cenſure in another Place), when he had fallen foul on the Toleration, and repreſented it as an Encouragement to Schiſm, and a Ground of Danger to the Church; thoſe People that thought him a Confeſſor for the Church, thought they could do no leſs than pull down thoſe Meeting-Houſes, which were the Seminaries of Schiſm. And this Doctrine of Non-Reſiſtance, which is cried up in all Caſes to be the Doctrine of the Church, this Doctrine is propagated by Reſiſtance: Theſe People will reſiſt to ſhew they are not for reſiſting, and oppoſe the Queen's Guards in Vindication of that Doctrine, That no Body ought to reſiſt: But it ſhews, that when a Madneſs is got among the People; they cannot think as they ought to do; and many unaccountable Things will be done; and, therefore, he might think it no Blemiſh to his Reputation. And Dr. *Sacheverell*, that has been condemned for thoſe Things by the Parliament, and ſtands convicted of being Guilty of them, ſome People having made it honourable to him, others thought it might be an Honour to them too, to demoliſh Meeting-Houſes, and to raiſe Seditions and Riots which are not to be borne in a civilized Country; for no Body knows where popular Tumults will end.

This being then the Matter of Fact on both Sides, and what there is in Fact, and in Preſumption, Give me Leave to take Notice what the Law is in this Caſe. For it has been inſiſted on by the Counſel for the Priſoner (I muſt do them Right, they have taken into Conſideration all the Caſes that relate to this Matter); that they inſiſt, his is not levying War; and, on this Ground, that he was not proved to be at the Meeting-Houſe in *Drury-Lane*, but only at the Fire at Dr. *Burgeſs*'s: And if he was only at one Place, one Inſtance would not make it levying War. If, ſay they, there had been a general Intention, it would have gone hard with him: There was an Intention the Night before, and Mr. *Burgeſs*'s was only mentioned; and it is not certain that there was a general Deſign to pull down the reſt: Nay, he was not there, and it was by Accident that he came into *Lincoln*'s-*Inn-Fields*, and he was but at that one Place; and they take Notice of ſome Caſes, eſpecially that about the Bawdy-Houſes, and that the Lord Chief Juſtice *Hales* differed from the reſt of the Judges.

This is a Matter that has been often under Conſideration: The Act of 25 *Edward* III. which is the great Law for Declarations of Treaſon, declares what ſhall be adjuged Treaſon: Compaſſing, or imagining the Death of the King, and levying War againſt the King, are two diſtinct Species of Treaſon. Now they ſay, that nothing was deſigned againſt the Queen. If the levying War againſt the Queen, was there meant only of a War againſt the Queen's Perſon, it would have been idle to mention it in that Act, becauſe they had before made the compaſſing Her Death to be Treaſon.

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Now he that levies War, does more than compaſs and imagine the King's Death; therefore, it has been always ruled, that where there is an actual levying of War, which concerns the Perſon of the King, they lay the Treaſon to be the compaſſing the Death of the King, and give a Proof of it by levying War. But there is another levying of War, which is not immediately againſt the Perſon of the King, but only between ſome particular Perſons. There is a vaſt Difference between a Man's going to remove an Annoyance to himſelf, and going to remove a publick Nuſance, as the Caſe of the Bawdy-Houſes; and the general Intention to pull them down all is the Treaſon: For, if thoſe that were concerned for them would defend them, and the others would pull them down, there would be a War immediately.

In the Caſe of Incloſures, where the People of a Town have had Part of their Common incloſed, though they have come with a great Force to throw down that Incloſure, yet that is not levying of War; but if any will go to pull down all Incloſures, and make it a general Thing to reform that which they think a Nuſance, that neceſſarily makes a War between all the Lords and the Tenants. A Bawdy-Houſe is a Nuſance, and may be puniſhed as ſuch; and if it be a particular Prejudice to any one, if he himſelf ſhould go in an unlawful Manner to redreſs that Prejudice, it might be only a Riot; but if he will ſet up to pull them all down in general, he has taken the Queen's Right out of her Hand: He has made it a general Thing, and, when they are once up, they may call every Man's Houſe a Bawdy-Houſe: And this is a general Thing, it affects the whole Nation.

Now, to come to this Inſtance: If you believe the Evidence, *Dammaree* was concerned in pulling down two Meeting-Houſes: He was not preſent at *Drury-Lane*, that is, he was not proved to be there; but, if he ſet others on to do it, it is his doing; and he as much pulled down that Meeting-Houſe in *Drury-Lane*, as if he had pulled it down with his own Hands. Beſides, they tell you his Declaration, that he would have all of them down. Again, theſe Gentlemen don't ſeem to deny, but if the Intention were general, it would be levying War: If it were general, where would it end? And it is taking on them the Royal Authority; nay more, for the Queen can't pull them down till the Law is altered: Therefore he has here taken on him not only the Royal Authority, but a Power that no Perſon in *England* has. It concerns all that are againſt the Meeting-Houſes on one Side, and all that are for them on the other; and therefore is levying War.

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They ſaid they would deſire this Point to be reſerved to them, on Account of the Opinion of the Lord Chief Juſtice *Hales*; but I believe this Matter has been ſo often ſettled, that it would be ſtrange for us to depart from ſuch a ſettled Rule of Law, for theſe are only the ſame Arguments that were offered by the Lord Chief Juſtice, and he offered the ſame Arguments that were uſed in Queen *Elizabeth*'s Reign; but it was then held to be Treaſon, and has been held ſo ever ſince. His Objection made them conſider it then, and they did ſo; and I ſuppoſe they will not expect that it ſhould have more Weight out of their Mouths than out of his: It was then ſettled, and has been taken for Law at all Times ſince, ſo that it is not a Matter now to be called in Queſtion. And as to the Statute 13 *Eliz.* the Intention to levy War ſurely is not an Intention to do a Thing, which, when it is done, is not levying War.

Thus the Matter ſtands in Point of Law: I take it to be clear, that it is levying War, if you take him to be guilty of being at one of the Meeting-Places, and leading them and tempting them to another: Whether that is true or not, is what muſt be left to your Conſideration. You have heard what has been ſaid, and what Difficulties ariſe in Point of Time, and on the other Proofs: If you are of Opinion, that he was preſent at *Lincoln's-Inn-Fields*, and did encourage them, and acted any otherwiſe than by Force; if you believe he led or invited them to another Place, and pulled down that, then you will find him guilty of High-Treaſon: If you think he was not there, or was under a Compulſion, then he will not be guilty. As for his being drunk whether he was ſo or not, ought not to influence one Way or other. 1710. 9 Annæ.

Then the Jury withdrew, and after an Hour's Receſs, brought in the Priſoner GUILTY, and Sentence was paſſed on him as a Traitor: But the Queen, being fully ſatisfied of his Loyalty and Affection to Her Perſon, though he had been miſtaken in the Manner of expreſſing it, was pleaſed to grant him Her Pardon.

The Remarks on this Trial will be found at the End of that of Purchaſe, *whoſe Offence was of the like Nature.*

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The Trial of FRANCIS WILLIS, a Footman for *High-Treaſon*, at the *Old-Baily*, *London*, on the 21ſt of *April*, 1710. 9 *Annæ*.

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Willis's *Trial.*

The Indictment.

THE Priſoner was indicted by the Name of *Francis Willis*, of the Pariſh of St. *Andrew's Holborn*, in the County of *Middleſex*, Labourer, for conſpiring to levy War and ſtir up Rebellion, and actual levying War againſt Her Majeſty on the firſt of *March*, in the Ninth Year of Her Reign, in the ſaid Pariſh of St. *Andrew's Holborn*, by aſſembling and marching with a Multitude of People in a Warlike Manner, that is to ſay, with Colours flying, Swords, Clubs, and other Weapons, offenſive and defenſive; againſt the Queen's Peace, and the Form of the Statute, &c.

The Evidence for the Crown.

The Witneſſes being called, *Thomas Tolboy* depoſed as he had done at the former Trial, That paſſing through the *Temple* on the laſt of *February* in the Evening, he heard the Mob that attended Doctor *Sacheverell* talking of demoliſhing *Burgeſs*'s Meeting-Houſe.

Grove teſtified, That the Inſide of two Meeting-Houſes were demoliſhed, on the firſt of *March*, one in *Fetter-Lane*, and another in *Hatton-Garden:* That with the Materials of the *Fetter-lane* Meeting-Houſe, the Mob made a Fire in *Holborn*; and with the Materials of the other, they made a Fire in *Hatton-Garden:* That at the Fire in *Holborn*, he ſaw a Man with a Curtain on a Pole, which he called the High-Church Standard, who was very active, ſtopped Coaches, got Money from the People, and made them cry out, HighChurch and *Sacheverell!* That this Man was in a Livery, but he could not tell whether it was Blew or Green; and was not ſure the Priſoner was the Man, but believed he was.

Victor teſtified, He ſaw the Priſoner throw a Piece of Wood into the Fire in *Hatton-Garden*, and Huzza; and ſeeing him ſpeak to Mr. *Lunt* his Acquaintance, he (the Witneſs) asked *Lunt* if he knew him? and *Lunt* told him he did.

Lunt depoſed, That he ſaw the Priſoner at the Fire in *Hatton-Garden*, who ſaid, they had made him Captain of a Party; that he took a Window-Curtain and made it his Colours, and that they burnt the Clock; but the Priſoner was above, when this Witneſs ſaw him.

Orrel only teſtified in general, that the Meeting-Houſes of *Bradbury*, *Burgeſs*, and thoſe in *Drury-Lane*, *Black-Friers*, &c. were pulled down, and that the People declared, *That they would have them all down*; but ſaid nothing againſt the Priſoner in particular, only that there was a Footman in a Blew Livery, very buſy at the Fire in *Holborn*, of the Size of the Priſoner.

The Evidence for the Priſoner.

The Priſoner's Witneſſes on the other Side being called, Mrs. *Miles* of *Grevil-ſtreet*, with whom the Priſoner lived, teſtified, That hearing there was a Fire in *Holborn* on the firſt of *March* at Night, ſhe ſent him out to ſee what was the Matter a little after Ten, and he returned before Twelve: Her Daughter Mrs. *Baiſco*, and the other Servants of the Family teſtified the ſame; and that Mrs. *Miles* being angry he ſtaid out ſo long, he anſwered, he had never ſeen a Mob before.

Pryor depoſed, That he met the Priſoner in *Leather-lane* the ſame Night about Eleven o' Clock, and walked with him through *Leather-lane* from *Holborn* to *Brook*'s Market; and having talked with him ſome Time, left him, and he thought the Priſoner went Home then;

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then; he did not ſee he was concerned with the Mob.

Fletcher teſtified, That *Groves*, one of the Witneſſes againſt the Priſoner, having been to ſee him in *Newgate*, declared he was not the Man that carried the Curtain; and *Grove* acknowledged at the Trial, that he declared he could not be poſitive it was he, after he had been to ſee him in *Newgate*.

Holgate teſtified, That he ſaw a Footman in a Green Livery very active at the Fire in *Holborn*; but he did not ſee the Priſoner there.

Two or three other Witneſſes depoſed, That *Grove* was a broken Baker, a looſe idle Fellow, and a Gameſter; and Mrs. *Miles*, and two or three Witneſſes more, gave the Priſoner a very good Character for a peaceable, ſober, well-behaved Servant.

Obſervations on the Evidence, by the Priſoner's Counſel.

After which, Mr. *Darnel* ſaid in his Defence, My Lord, We will not trouble you with any more Witneſſes; we hope we have well accounted for the Time he was out of his Miſtreſs's Houſe; for that ſeems to be all that ſticks upon him, that his being out ſo long might give Room for him to be concerned in this Tumult: But by the Witneſſes it appears, that the Curioſity of ſeeing a Mob, which he had never ſeen before, might take up ſome Part of his Time; and the two Fires being ſo near, that he could not go from one without ſeeing the other, engaged him to go to them both. There was a Friend too that met him, with whom he walked up and down the Street an Hour; but we think it ſhews that he was not a Ringleader, or aiding or aſſiſting in pulling down the Meeting-houſes; for that Witneſs ſays, they were then carrying the Materials, and the Fire was lighting at the Time when they were together; and that he parted with him in order to go Home, but his Curioſity carried him to ſee that Fire that was then lighting, that he might carry an Account of it.

But upon the main Queſtion, we muſt humbly inſiſt, that there is not Evidence to fix it upon the Priſoner. There are not two Witneſſes to any Overt-Act of the ſame Treaſon, nor do theſe Witneſſes aſcertain it to be the Priſoner; for now it appears a little plainer, that his firſt Charge was againſt a Footman in a Green Livery: He declared it was a Footman in Green with Braſs Buttons, and when he came to *Newgate* to ſee this Man, he believes him to be the ſame Man, that is the moſt of his Evidence; but when he came Home then to his Companion, that he lived in the Houſe with, he believed it was not the ſame Man, and he could not ſwear it was the ſame Man, becauſe he had a blew Coat; and now he would carry his Belief ſo far as to believe that he then had a blew Coat with black Buttons; and ſurely, no Man could miſtake a blew Coat with black Buttons for a green Coat with braſs Buttons: Whatever may be ſuppoſed of the Colour of Blew by Fire-Light, altering by that Light towards a Green, yet it can't turn black Buttons into Braſs ones.

Suppoſing the Perſon whom *Groves* pretends to accuſe were here, yet there are not two Witneſſes to any Overt-Act, for it is only confirmed by the Confeſſion, which is proved by *Lunt*; but we hope the Priſoner is not the Perſon that had the Colours, and therefore there is no Evidence to make him Guilty. We cannot differ from the Reſolution in the Books in *Meſſenger*'s Caſe, much leſs with your Lordſhip's Reſolution Yeſterday: But the Caſe is entirely different between the Waterman and this Man, for there it did appear, that he carried the Branch, and threw it into the Fire; that from thence he hollowed, and led a Party, and offered to be their Captain, to *Drury-lane*; and in that Manner he took upon him to lead them, and did lead them: But there is not any one Inſtance of that Nature here; there is not any one Witneſs that proves him to be in a Meeting-Houſe, or to have done any Thing there, or to have gone from one to another. If he had joined with them at the firſt Fire, and gone in with them in what they were doing, yet we muſt inſiſt, that it would not make him guilty of High-Treaſon. In the Caſe in King *Charles* the Second's Time, it was apparent they were all in the Deſign; the Verdict found that they aſſembled, that they armed themſelves, that they choſe a Captain, that when the Government thought fit to interpoſe to ſuppreſs them, they ſtruck at the Officer, threw Stones at the Captain of the Guards, expreſſed their Reſolutions of going to *Whitehall*, and ſhewed what their Intent was; but no Deſign is proved againſt this Man, and nothing to make it agree with that Caſe: But thoſe Perſons that ſtood by, were by all the Judges acquitted from that Treaſon. We think the Evidence was much ſtronger againſt them, than what is offered againſt this Man: For in the Caſe of *Beadle*, he was proved to be among them; and when the Officer purſued him, he turned about, and cryed to the People to face about, and not to leave him: And though it appeared he was in the Deſign, and called to the reſt to reſiſt in his Defence, yet it was agreed, he was not guilty of High-Treaſon, becauſe he was not aiding in pulling down the Houſes; which (in thoſe Matters wherein the Judges gave their Opinions) made it to be High-Treaſon: But as to *Green* and *Beadle*, in the firſt ſpecial Verdict, they agreed the Verdict was not full enough to convict them.

In anſwer to this Defence of the Priſoner's Counſel, Mr. Sollicitor ſaid,

The Reply of the Queen's Counſel.

I think Mr. *Darnell* does agree, that if there was a general Intention to pull down Meeting-Houſes, it would be Rebellion and High-Treaſon. I take it, that it was ſo, is as fully proved as poſſible, by having ſo many pulled down, and by ſuch a Multitude of People as were got together for that Purpoſe: For it cannot be thought, that the People that were at one Houſe intended to pull down that, and thoſe that were at the other Houſes intended to pull down them only; but it muſt be a general Intention to pull down Meeting-Houſes in general; we think, therefore, the general Intention is proved, therefore what *Tolboy* ſays don't confine it: For though he ſays, what they declared was only in Regard to Mr. *Burgeſs*'s Meeting Houſe, yet that don't take off from the Evidence of what paſſed the next Day

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Day, when the ſeveral Meeting-Houſes were pulled down; and the Fact, without that Evidence, ſhows the particular Intention, and the Mob that were at *Lincoln's-Inn-Fields* ſwore, *Damn them, they would have them all down*, and accordingly they went away to another, and pulled that down; therefore, that there was a general Intention, is ſufficiently proved, and that this Man did act in that Intention: We think it is ſufficiently proved, that he was at two of them; but if it had been but one, it had been the ſame Caſe.. But they object, that this is not a legal Evidence; for, ſay they, the Statute reſtrains it, and ſays, that no Confeſſion can be given in Evidence, and the Evidence of *Lunt* without it will not do; and *Grove*'s not ſwearing poſitively to the Man without the Help of *Lunt*, will not be a legal Evidence, ſo as to prove it an Overt-Act. This is the Strength of the Objection in Point of Law, and God forbid that we ſhould inſiſt on any Thing but what is legal Evidence: It is Juſtice to him, not to offer any ſuch Thing, as it is to the Crown, to inſiſt on what is legal Evidence, to bring him to Puniſhment. The Words of the Act are, *That no Perſon ſhall be indicted, tried, or attainted of High-Treaſon, whereby Corruption of Blood may be made, or of Miſpriſion of ſuch Treaſon, but by the Oaths and Teſtimonies of two lawful Witneſſes, either both to the ſame Overt-Act, or one to one, and the other to another Overt-Act of the ſame Treaſon, unleſs the Party willingly, in open Court, confeſs the ſame*, &c. Now in this Caſe, here are two lawful Witneſſes: *Grove* is a lawful Witneſs, he is capable of being a Witneſs; whether what he ſays is ſufficient for the Proof of the Point muſt be left to the Conſideration of the Jury. If there are two legal Witneſſes, to which there are no legal Objections, it is ſufficient; whether what they ſwear is ſufficient to prove the Fact, is of another Conſideration; but there is not one Word in the Act to reſtrain a Confeſſion from being given in Evidence: He ſhall not be convicted on a Trial without two lawful Witneſſes, that is the Thing that is provided for, and it was to exclude a Precedent that had been ſettled in *Tong*'s Caſe, in my Lord Chief Juſtice *Keyling*'s Reports, an Evidence of Confeſſion only, that was proved by two Witneſſes, and that was the Occaſion of making this Law, that his Confeſſion alone ſhould not be ſufficient, without an Overt-Act. This was the Reaſon and Ground of making that Act of Parliament, but it was not deſigned to exclude all Confeſſions: That was Evidence at Law, and always muſt be ſo; that Evidence that comes out of a Man's own Mouth, was always allowed: The Deſign of the Act was to exclude Confeſſions from having the Force of a Conviction, unleſs it were in a Court of Record, and to prevent a Confeſſion proved by two Witneſſes, from being a ſufficient Ground for a Conviction. A Confeſſion is a conſiderable Evidence, and in many Caſes clears a Thing beyond Contradiction; and in this Caſe it ſhews how neceſſary it is, for when Things are tranſacted in the Dark, and it is impoſſible for Strangers to give a clear Deſcription of Perſons, ſurely the Confeſſion of a Man himſelf is the moſt proper Evidence in the World, and the moſt ſatisfactory. This then being a lawful Evidence, it ſtands clear of that Objection: Here are two Witneſſes to the Overt-Act, and this Evidence of *Lunt* is not excluded, but this Confeſſion of the Party is lawful to be given in Evidence.

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This being the State of the Matter, how ſtands it then? It is agreed he was at the Bonfire in *Holborn*; he was ſent out for that Purpoſe; the Fire was ſeen at his Miſtreſs's Houſe, and he was ſent out to enquire after the Matter. That there was a Man there in a blew Livery, is proved by ſeveral People, and it is proved he had a blew Livery. *Grove* ſays, he ſaw a Man, he can't tell whether he was in Blew or Green, with a Standard in *Holborn:* He ſays he don't know whether he was in Blew or Green, but he took him to be a Man of that Size, and he ſuppoſes him to be the Man. But here is ſtill a Doubt, whether this is the Man that carried the Standard, and how is that cleared? Now this, with Submiſſion, is cleared by the Man himſelf, if that be Evidence, which we inſiſt upon it, it is. This Declaration to *Lunt*, that he had made Colours of a Curtain, and that he was choſe Captain of a Party, That does explain it, and is not anſwered by any Thing that they have offered to the contrary. As to his acting in the Tumult in *Leather-lane*, *Victor* ſwears he ſaw him with a Piece of Timber on his Shoulder, and that he carried it, and threw it into the Fire. *Lunt*, as to every Thing he ſpeaks, is clear: He proves that he ſpoke ſome Words to him; and as to what *Victor* ſays, he is as clear, that he had the Wood, and threw it in. The only Queſtion then will be, where he had this Wood? Whether he had the Wood that he threw into the Fire, made of the Materials of the Meeting-Houſe, from any other Place? They give you ſome Evidence, that he was going Home quietly, and that they parted about Eleven at *Brook*'s *Market*; but it is plain he did not go Home till juſt Twelve, for ſo all the Family agree: So that that Time is to be accounted for, which he might have ſpent at this Bonfire, and in this Tumult. There is another Man to anſwer the Buſineſs of what they call the High-Church Standard: He ſays, there was a Man in a Green Livery which he ſaw, and thought he knew him, but could not be poſitive becauſe he was at a Diſtance; but if it had been this Man, he believes he ſhould have known him; but there is as little Reaſon for him to know the one as the other. The Man in the Green Livery, he ſays, is run away, but he ſays nothing as to the Braſs Buttons; and it is eaſy to miſtake between Green and Blew.

I ſhall not urge the Evidence further than it is reaſonable; theſe are Circumſtances which will be under the Conſideration of the Jury. But ſuppoſing the Man to be concerned in this Manner, acting as the Queen's Evidence have proved, it will be High-Treaſon within the Caſe in my Lord *Keyling*'s *Reports*, and is not diſtinguiſhed by what Mr. *Darnell* offered. He ſays there was leading and arming, and they ſtruck at the Guards; ſo here was leading, for nobody denies but they had a Standard:

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The only Queſtion is, Whether the Priſoner carried it? And in the other Mob in *Lincoln's-Inn-Fields*, they were led and hollowed away to *Drury-lane*. And as to the Caſe of *Beadle*, which he would compare it to, there was no Act that was done by him: Beſides, the Verdict was defective, in not finding the aiding and aſſiſting; for though they found the Facts, yet they did not draw the Concluſion from thoſe Facts. As to what has been ſaid to the Reputation of *Grove*, I don't find it any ways affects him; it is not proved that he has cheated, or that he is a Common Gameſter, or that he lives by that Way. As to the Reputation of the Priſoner, there may be many honeſt Men that might think they did Service at this Time, and he might be deſired among the reſt; but that is no Argument why he ſhould not be concerned in the Fact: Whether he was, or not, is what we muſt ſubmit to the Conſideration of the Jury.

The Chief Juſtice's Directions to the Jury.

Then the Chief Juſtice, having ſummed up the Evidence on both Sides, gave the following Directions to the Jury. He obſerved that the Uſe the Counſel for the Priſoner would make of their Evidence, was, firſt, to ſhew that they had given an Account of his Time; that he was otherwiſe employed than in the Manner the Witneſſes for the Queen have given an Account of. Now it is certain, they have not; for they give an Account only of a Walk from *Holborn* to *Brook's Market*, whereas his own Witneſſes ſay, he was out at leaſt an Hour and a half; ſo that there was Time enough for him to be there: And though that Witneſs ſaw him going homeward, and not to the Fire, yet it is certain, he did not go Home then, and that he was at the Fire, becauſe two Witneſſes ſwear he was at the Fire; and it does appear that he was at both the Fires. Before I ſtate that, give me Leave to ſay, that as there is a full Proof of a general Deſign, put in Execution, of pulling down the Meeting-Houſes, ſo any one that is aiding in that, is Guilty of High-Treaſon, though he were not privy to the firſt Deſign; for in High-Treaſon, there is no ſuch Thing as Acceſſaries; all that are Actors are equally Guilty, and that was the Caſe of the Lord *Eſſex:* He went with ſome Forces to remove ſome evil Counſellors, and came to the City to deſire Aſſiſtance; ſome Forces he had aſſembled in his own Houſe; others join'd him in the City; it was adjudged they were all Guilty of High-Treaſon, though they did not know of his Deſign; and thoſe that were accidentally there, and did depart, it was ſaid, were entitled to Her Majeſty's Grace; but it is not ſaid they were Not Guilty. So was the Caſe of the Bawdy-Houſes; yet it is not ſaid, that any of them were the Perſons that formed the Deſign of pulling them down.

You are therefore to conſider, that it is not enough to charge the Priſoner, that he was at the two Fires: It is not enough that there was Time for him to do what he is charged with; but you are to conſider what is proved on him, that he did. You obſerve what is objected as to *Grove*, that there is a great Uncertainty as to his Evidence, and that his Credit is not fair: He don't charge the Priſoner poſitively, nor ever did. He differed as to the Colour of his Cloaths: And though it is rightly obſerved, that Blew and Green are not eaſily diſtinguiſhed by the Light of the Fire, yet that is not the Objection; the Objection is, that the Witneſs, at firſt, declared he believed it to be Green, and now he has told you, that he believes it to be Blew, and that is not conſiſtent, and does therefore a little concern his Credit in this Matter, that he has changed his Evidence. Then they ſay, that he did not ſee him at the Meeting-Houſe: He ſaw ſome Body carrying Colours, and believes this to be the Man; but he ſays, he was not near enough to diſtinguiſh his Cloaths, ſo he might not be able to diſtinguiſh his Face. But then they bring ſome Witneſſes to ſhew he is not a Man of ſo clear a Credit; but they don't charge any great Matter upon him. As for his having broke, that is a Misfortune that may attend any Man: But then they would ſupport this by the Confeſſion he made to *Lunt*, who ſwears, that he ſaid he made Colours of a Curtain. Now that may ſeem to give ſome Colour to it; but I ought to take Notice of the other Part of his Confeſſion, that they made him Captain of a Party, which don't appear to be likely; for as he was moving from one Party to another, it would be very natural for the Captain to have his Mob with him, but it is plain, he was unattended in going from one Fire to another. When he was at that Fire in *Hatton-Garden*, he went away alone, as *Lunt* ſays: And they don't ſay that he did encourage the Mob. He did throw down a Piece of Wood, and Huzza; but he did not much encourage others. As to the Piece of Wood, one of the Witneſſes did not ſee it, and the other, that did ſee it, did not ſee him in the Meeting-Houſe; ſo that it is not proved he was at either of the Meeting-Houſes, though he was at the Fires. And you may conſider another Circumſtance, and that is, that this Witneſs, *Victor*, did not know him before; nor did he know what Cloaths he had on; and if he had not come nearer to him, to *Lunt's* Door, in Probability, he had not known him again; but he ſays he ſaw him throw a Piece of Wood into the Fire; and he ſays he kept his Eye upon that Man, and ſaw him come up and ſpeak to *Lunt*. Now you will conſider, whether ſuch a Man might not, in a Crowd, ſlip out of his Eye, and he might take another for him; for *Lunt*, that knew him, ſays, He did not ſee him have any Timber at all.

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Theſe are the Obſervations that, I apprehend, may be moſt proper for me to make to you. As for the Law, if you take it, that he is the Man that had the Colours in *Holborn*, and afterwards came to the other Fire, and threw the Piece of Timber in there, he is undoubtedly Guilty of High-Treaſon: Therefore you muſt conſider firſt, how far you believe he is the ſame that carried the Colours in *Holborn*, and how far you take him to be concerned in pulling down the Meeting-Houſe in *Leather-lane*. I ſhould take Notice of another Thing, that there was a Footman in Green, at the Fire in *Holborn*, who was very active; and that Man could not miſtake the

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Colour of Blew and Green, becauſe he knew the Priſoner: Now, that being ſo, it does appear there was a Footman in Blew, and another in Green, that was active at the Fire in *Holborn*; and one of theſe two, perhaps, had the Colours; the Queſtion is, Which? *Grove* firſt ſays, the Man that had the Colours was in Green, and then he ſays he was in Blew. Now, if the firſt be right, that he was in Green, it does appear there was ſuch an one in Green: If you believe he was the Perſon that did make uſe of theſe Colours, and that he was aſſiſting in pulling down the Meeting-Houſe in *Hatton-Garden*, then you are to find him Guilty: If you think he was not the Perſon, you will acquit him. 1710. 9 Annæ.

Then the Court adjourned, and the Jury brought in their Verdict in the Afternoon, That the Priſoner was *Not Guilty:* And thereupon *Willis* was diſcharged.

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The Trial of GEORGE PURCHASE, for *High-Treaſon*, at the *Old Baily*, *London*, on the 21ſt of *April* 1710, 9 *Annæ*.

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Purchaſe's *Trial.*

The Indictment.

THE Indictment charged, That *George Purchaſe*, late of the Pariſh of St. *Andrew*, *Holborn*, in the County of *Middleſex*, Labourer, did, on the firſt of *March*, in the ninth Year of the Queen, at the ſaid Pariſh of St. *Andrew*, in the County aforeſaid, conſpire to levy War, and raiſe a Rebellion, and did actually levy War, on the Day and Year aforeſaid, at the Pariſh aforeſaid, aſſembling with a Multitude of other People, to the Number of Five Hundred, with Colours flying, and armed with Swords, Clubs, and other Weapons, offenſive and defenſive; againſt the Queen's Peace, and the Form of the Statute in that Caſe made and provided.

Tolboy's Evidence.

The Evidence for the Crown being called, *Tolboy* was ſworn again, and teſtified as he had done at the former Trials, That paſſing through the *Temple* on the laſt of *February*, in the Evening, he heard Dr. *Sacheverell*'s Mob ſay, They would pull down *Burgeſs*'s Meeting-Houſe that Night, or the next; and improving in his Evidence, he added, He heard them reſolve to pull down *the Meeting-houſes in general.*

Orrell's Evidence.

Orrell being ſworn again, depoſed as he had done at the former Trials, That he ſaw the Inſide of the Meeting-Houſes in *Lincoln's-Inn-Fields*, *Fetter-Lane*, and that of *Drury-Lane*, demoliſhed and burnt, and that *Dammaree* led the Mob from the Fire in *Lincoln's-Inn-Fields* to *Drury-Lane*, Meeting-Houſe, huzzaing and crying out, *High Church and* Sacheverell! *God damn all his Enemies! We will have all the Meetings down to Night.* That he (the Witneſs) met the Horſe-guards coming towards *Lincoln's-Inn-Fields*, and carried them back to *Drury-Lane*, where they rode among the Mob, who were burning the Materials of that Meeting-Houſe, and diſperſed them: And there particularly he ſaw the Priſoner, *Purchaſe*, with his Sword drawn, and ſome of the Horſe riding up to him, he retired towards a Bulk, and puſhed at them, and ſome of them ſtruck at him with the Flats of their Swords; and thereupon he (the Witneſs) ſaid to *Purchaſe*, Do you know what you do in oppoſing the Guards? You oppoſe the Queen's Perſon; and, in Friendſhip, laid his Hand on the Priſoner's Breaſt, to prevent Miſchief; but the Priſoner anſwered, *God damn you; are you againſt* Sacheverell: *I am for High Church and* Sacheverell: *God damn all his Enemies; I will loſe my Life in the Cauſe; I will fight the beſt of them:* Then he huzza'd, and ſaid, Boys, I will lead you on for High Church and *Sacheverell.* That afterwards he ſaw the Priſoner run his Sword at the Officer of the Guards, and believed he would have run him through, if one of the Guards had not ſtruck down his Point; but he did not ſtay to ſee what followed: He apprehended the Guards would fire, and it would be dangerous ſtaying longer, and concluded the Guards had either killed the Priſoner or taken him; adding, that as the Guards paſſed by, ſome of the Mob ſaid, Damn them, we will be even with them To-morrow Night; they dare not fire upon us; and that *Purchaſe*, the Priſoner, was very much in Drink.

Ruſſel's Evidence.

Richard Ruſſel, one of the Horſe-Grenadiers, teſtified, That he was commanded to go with his Serjeant to *Drury-Lane*, on the 1ſt of *March* at Night, and they drew up about the Fire that was made in *Drury-Lane*, at the End of *Queen-ſtreet*, and there he ſaw *Purchaſe*, the Priſoner, come down the Lane, at the Head of the Mob, with his naked Sword, huzzaing and flouriſhing it over his Head, and crying, God damn you, are you for Low-Church, or High-Church and *Sacheverell?* and the Witneſs and another Soldier, thereupon, ſtruck at him; and he got between them, and made ſeveral Puſhes. And it being demanded, If the Mob diſperſed themſelves on their coming, *Ruſſel* anſwered, As they diſperſed them one Way, they drew together at another Place; and they were commanded to draw into a Line, and to draw back their Horſes, that no body might get behind them; and drawing back into a Door-way, *Purchaſe* was got behind them between their Horſes, and then they ſtruck at him with the Flat of their Swords.

Southerland's Evidence.

Southerland, Serjeant of the Grenadiers, teſtified, That he ſaw *Purchaſe* flouriſhing his Sword at the Fire in *Drury-Lane*, and crying out, *Sacheverell! Sacheverell!* and thereupon he rode up to him, and asked him, If he encouraged the Mob, and *Purchaſe* anſwered, Damn you, I am for *Sacheverell*; and the Witneſs lifting up his Hand, *Purchaſe* drew back and offered his Point, but did not thruſt: he (the Witneſs) then asked, If he was mad, and bid him go home; *Purchaſe* anſwered, He was one of the Life-Guard; and Captain *Horſey* ordered them to cut him to Pieces, but he got away into *Long-Acre.*

Richardſon,

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Richardſon's *Evidence.*

Richardſon, another of the Life-Guard, depoſed, That he knew *Purchaſe* very well, he having ſerved in the Firſt Troop of Horſe-Guards, and that he ſaw him make a Thruſt at his Officer, Capt. *Hensbrough*, as they were diſperſing the Mob in *Drury-Lane*; and he (the Witneſs) beat down his Point, and ſaid, You Raſcal, have you a Mind to kill my Officer? and going to ſtrike at *Purchaſe* afterwards, he threw himſelf againſt a Bulk and the Witneſs; and he hit the Pent-houſe, and broke his own Sword to Pieces.

Evidence for the Priſoner.

The Queen's Counſel having cloſed their Evidence, *Purchaſe*'s Witneſſes were called, and proved that he had been employed the firſt of *March* in his proper Buſineſs, *(viz.)* arreſting ſome People, and drinking with them and others from Morning till Night. And *Broad* the Bailiff particularly teſtified, That he left *Purchaſe* very drunk in *Covent-Garden*, a quarter before Eleven that Night.

Bembridge, another of his Witneſſes, teſtified, That he ſaw *Purchaſe* in *Long-Acre*, alone, that Night, and there was no Mob with him, nor was his Sword drawn, but two or three of the Horſe-Guards rode up to him, and ſtruck at him; whereupon he retired; and that the Mob were then diſperſed.

Blanfeild depoſed, He ſaw *Purchaſe* come up *Drury-Lane*, towards the Fire, alone, about a quarter after Eleven, when the Guards had diſperſed the Mob, and that ſome of the Guards riding up to him, and ſtriking at him, he held up his Sword in the Scabbard to defend himſelf, and retired.

Thomas Street, the Watchman, alſo depoſed, That he ſaw two or three of the Guards ſtrike at the Priſoner, and he endeavoured to defend himſelf with his Sword, and fell againſt a Bulk-door; for he was ſo drunk he could neither ſtand nor go; and almoſt all the Mob were gone before *Purchaſe* came.

Plaxton, the Surgeon, teſtified, That he was ſent for by *Purchaſe*'s Wife, on the firſt of *March*, late at Night, to let him blood, becauſe ſhe thought he had got ſome Hurt; and he went to *Purchaſe*'s Houſe, and found him very much in Drink.

Then Mr. *Darnell* made his Obſervations on the Evidence for the Priſoner, and ſaid,

Obſervations on the Evidence, by the Priſoner's Counſel.

We think, my Lord, though he is a Bayliff (for there ſeems to be ſome Reflection caſt upon him for that Reaſon) yet we doubt not, but he will have the ſame Juſtice done him here, as if he were a Man of the beſt Eſtate: For whatever is determined as to this Man, may be the Caſe of any other who may happen into the like Circumſtances; therefore I beg Leave to obſerve, how far any Thing is proved againſt him, that may make him guilty of High-Treaſon. We think we have given a full Anſwer to all the Preſumption, that he was engaged in the original Intention of pulling down the Meeting-Houſes, or that he was aiding in the Execution of that original Intention. We think the Evidence on both ſides agree in this, That the Priſoner was not concerned in the original Intention, and that he was not with the Mob that purſued Doctor *Sacheverell* to *Weſtminſter*, and brought him back in Triumph, and then went to pull down the Meeting-Houſes: But the only Thing that is proved againſt him is, that after they were pulled down, and after they were burnt, when the Guards were come, and they were diſperſing the Mob, then the Priſoner is ſo unfortunate to be found with his Sword drawn, hollowing and aſſerting the Right of Doctor *Sacheverell*; and that he would ſtand by him, and encouraging the People to do ſo. This is the moſt of the Evidence that can be againſt him: Then the Queſtion is, Whether this, ſingly, can make him guilty of High-Treaſon? For if his Part in the general Intention be out of the Caſe, as it muſt be if he came after the Fact was committed, then the Queſtion will be, Whether a Man that comes in afterwards, by ſaying the worſt he can ſay, ſhall make himſelf guilty of High-Treaſon?

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My Lord, we hope the Evidence on behalf of the Queen, is reconcileable with the Evidence for the Priſoner; and that the Evidence for the Priſoner ſhall be believed, that he only defended himſelf againſt the Guards that rode up againſt him; for *Richardſon* ſays, he did not ſee him when the Guards firſt came there, and that agrees with the Account that *Broad* gave; for he ſays, he heard the Guards were marching, before they came out of the Tavern. *Blanfield* agrees with the Evidence *Orrell* gave: Says he, the Mob were diſperſed under the Eaves of the Houſes. Says *Blanfield*, At the Time the Guards ſtruck him, there were People under the Houſes: But I don't look upon them to be the chief Mob, but only ſome Women and People looking on. And then the Queſtion is not whether his Sword was drawn or not, but on what Occaſion, and what his Deſign was in drawing it? Our Witneſſes ſay, That when the Guards ſtruck at him, he only held up his Hand to defend himſelf, and that might fright the Horſe; and he being angry at it, ſpurred up and ſtruck him. It is natural to think the Guards ſhould ride up to thoſe that were ſtanding in the Street, and enquire who they were: I don't depend on the Circumſtance of his being in Drink, that it is any Excuſe; for then, if a Man has ſuch a Deſign as this, he may eaſily pretend himſelf to be in Drink, and he will give himſelf Drink enough to encourage himſelf to do ſo bold an Act: But the Uſe we make of it is to ſhew, that he had not any Intention in this. He had drank himſelf too far for to have a Deſign of joining with any Party, or to do any particular Thing. And my Lord *Coke* in his *Pleas of the Crown*, where he is giving his Opinion what is levying War againſt the Queen, ſays, That the Act alone is not ſufficient to convict the Party; but the Mind is to concur in it: It is not barely doing an Act that is ſufficient to convict a Man; for he muſt do it with that Deſign. Indeed, if a drunken Man ſtabs another, it is Murther; becauſe Malice is ſuppoſed, where ſuch a Fact is done: But in Caſe of High-Treaſon, there muſt be an Intention proved in the Party that doth the Fact. If he was in that Condition at the Time he came out of the Tavern, and did any Thing by Way of encouraging them, we hope it is not ſuch an Evidence againſt him as will make him

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him guilty of any Part of the Intention, if his Mind did not concur in it.

The Reply of Mr. Sollicitor to the Priſoner's Defence.

Mr. *Sollicitor General.* My Lord, the Evidence given by the Priſoner, and the Defence made on his Behalf, is ſo far from giving any Anſwer to our Evidence, that it renders the Fact more probable than it was before: For they have proved, that he is a Man likely to be concerned in ſuch an Affair; that he had been drinking all Day, and fit to engage in ſuch a Matter, and that he is troubleſome in his Drink; which are Circumſtances that ſhow the Inclination of the Man, and make it probable that he ſhould engage in this Matter: The Facts we take to be High-Treaſon. They ſay on the other ſide, it is not ſo, becauſe we muſt prove a general Intention to pull down all Meeting-Houſes, and the pulling down a ſingle one is not ſufficient. I will not now diſpute that Point with them; for that there was ſuch an Intention, appears moſt plainly, by what paſſed that Night, by the ſeveral Meeting-Houſes that were pulled down. It was a general Intention, or elſe they could not have gone through ſo many in ſo ſhort a Time; and it is not neceſſary to prove any previous Conſult, for the Act itſelf is Treaſon: Where the Intention is the Treaſon, there the Act muſt be proved that ſhows it. So it is in the Caſe of counterfeiting the Coin. No Body will ſay there is any need to prove any Deſign. That there was ſuch an Intention is plain, by what was committed; and any one that joins with ſuch a Number of People who are committing Treaſon, is equally guilty with them. They ſay, he had not his Sword drawn; that he was going Home, and he only lifted up his Hand with his Sword in his Scabbard, to defend himſelf. But that Evidence don't interfere with what is offered on Behalf of the Queen; or if it did, yet we think our Evidence is of greater Credit and Weight than what they offer: For they that encounter a Man who has his Sword drawn, can never be miſtaken, but deſerves more Credit than thoſe that are only paſſing by, and have no Danger from, or Concern with him: But this is all conſiſtent; for *Ruſſel*, and thoſe who ſay his Sword was drawn, ſay, he came from St. *Giles*'s Way, and the others ſay, it was after the Mob was diſperſed; and that he came up the Lane, and that he went off by *Long-Acre*, and they ſaw him no more. Now, ſince no Body ſaw him Home, he might go that Way, and afterwards come down and join the Mob, in the Manner the Soldiers have told you, and, then he might be driven off, and come ſome Way round again, with his Sword in his Scabbard: And theſe muſt certainly be different Times, for thoſe who ſpeak of his Sword being drawn, ſay, it was when he came from *Holborn*; and they that ſay his Sword was in his Scabbard, ſay, it was when he came from the other Way, and then there can be no Contradiction between the Evidence. And we take it, the Law is as plain as the Fact; and that it is High-Treaſon.

The Chief Juſtice's Directions to the Jury.

Then the Chief Juſtice directed the Jury, and ſaid,

The Matter will be now for you to compare theſe two Evidences together; and to conſider, firſt, Whether thoſe Things are true which are ſworn by the Queen's Witneſs, or whether they are anſwered by the Witneſſes for the Priſoner; and then what Streſs is to be laid upon his being in Drink: And as there is no Objection made to the Witneſſes of either ſide, you are to take what they have ſaid to be true, abating the little Miſtake a Man may fall into as to the Exactneſs of Time, and the like. As to what they would pretend of his going ſtraight Home from the Tavern, you will obſerve, there is Time enough for him to have done all that he is charged with; for it all happened in a quarter of an Hour, or a little more. If he parted from the Tavern about Ten, from that Time till a quarter or half an Hour after Eleven, is Time enough to do all has been ſpoken of. I think, there is little Streſs to be laid upon the Time, becauſe there is a Series of Facts. The firſt Thing done by him before the Mob was diſperſed, was his coming behind the Horſes; and you will find the Reaſon for that Command of the Officer to let none come behind him: But he, as drunk as he was, knew there was no hurting the Guards, unleſs they could get behind them. He had been in the Guards himſelf; and you muſt conſider what Deſign he had in getting behind them, when the Street was open for him to go in. But if he had a Deſign to get behind them, that the Mob might pull them off from their Horſes, he acted very rationally, though he was drunk: That Fact was proved by *Orrel* and *Ruſſel*. Another Fact was, when they were drawn up above the Fire near *Holborn*, he was then coming down from St. *Giles*'s: So that is plainly not the Time that the Witneſſes ſpeak of when he was coming up the Lane. Then this was only when the Horſe-Grenadiers were there, and the other was when the Horſe-Guards came, when they were drawn up below *Long-Acre*; and there they ſwear he made a Paſs at Captain *Hensborough*: And *Ruſſel* tells you, that as he ſhelter'd himſelf under the Houſes, his Sword ſtruck againſt the Pent-houſe, and broke to Pieces. *Southerland* ſpeaks of another Time when he was at the Corner of *Long-Acre*; and then indeed he was doing nothing; And that is the Time when he told the Captain that he had been troubleſome to the Grenadiers; and thereupon the Captain bid him go and cut him to Pieces: He did go, and then the Priſoner made off; but this was when the Mob was in a great Meaſure diſperſed. Now when do his Witneſſes ſpeak of? They ſpeak of a Time when he came up the Lane, that ſurely is not the Time that either of thoſe Witneſſes ſpeak of: They ſay he ſtood quiet, and a Soldier rode up to him and ſtruck him. You will conſider whether that was not the Time that *Southerland* ſpeaks of: So that you will conſider whether the Evidence of both ſides is not reconcileable; whether after he parted from *Broad*, he might not join the Mob, come down from towards St. *Giles*'s, get behind the Horſe, and afterwards make a Paſs at the Captain, and then be driven down with the Mob towards the lower End of the Street. If ſo, it was natural, when they were driven down the Lane, for them to go Home, and

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and as his Home was up the Lane, he muſt come back alone. If you do believe he was guilty of reſiſting the Guards in this Manner, when he was admoniſhed what the Conſequence was, and he, inſtead of making an Anſwer, only asks, are you an Enemy to *Sacheverell?* and encourages the Mob to follow him; you are to conſider how far this will make him guilty with the reſt: For the Counſel for the Priſoner, though they object to the Evidence of what paſſed in the *Temple*, yet they agree this Tumult was a Rebellious Tumult, and the Fact ſhews there was ſuch a Deſign. Indeed, they did not pull down all the Meeting-Houſes; but the Reaſon was, becauſe the Guards diſperſed them. They admit therefore, this was levying War in the Perſons concerned in it; but they would excuſe him, that he came late and very drunk, and did nothing but was beat by the Guards; and that his Drunkenneſs diſables him from having a Share in the Deſign; and therefore he cannot be guilty. It is inſiſted, that it is neceſſary he ſhould be engaged in the original Deſign; but there is no Need of that, for that is the Earl of *Eſſex*'s Caſe: It is there adjudged, that the Earl of *Southampton* was guilty of Treaſon, by joining the Earl of *Eſſex*, though he did not know of his Deſign; and thoſe that diſperſed upon the Queen's Proclamation, it is ſaid, they were entitled to the Queen's Grace; but it is not ſaid, they were not guilty of High-Treaſon. In Felony there may be Acceſſaries, thoſe that are concerned in contriving the Felony, or afterwards in aſſiſting the Perſon; but in High-Treaſon all are Principles, and are guilty equally with thoſe that are the Actors. If there is a Deſign to levy War, and it is not levied, thoſe who were in the Deſign are guilty of Treaſon; and ſo are thoſe that Act in it, though they were not in the original Deſign, Guilty. Say they, He was not at the pulling down any Meeting-Houſe: It is true but he was defending thoſe that did. It is plain, by the Courſe they took, if they had not been diſperſed, they would have pulled them all down. It is not, indeed, accompliſhed; ſome of them are ſtanding; but it is becauſe they were diſperſed. Now, is not this aiding them, when he endeavours to kill the Captain of the Guards, who came to diſperſe them? And if he could have prevailed to have baffled the Guards, they might have gone to the reſt; and, when they had pulled them down, they might have pulled down every Man's Houſe they thought fit. My Lord *Coke*'s Expreſſion is made uſe of, That the Act don't make the Man guilty, unleſs the Mind be guilty; therefore they would infer, that he muſt be concerned in the Deſign originally. This is a great Fallacy: *Oldcaſtle* was at War againſt the King; ſeveral furniſhed him with Victuals and Drink, and it was found they did it meerly for Fear of Death; but as ſoon as they could eſcape from him, they did; and thereupon they were adjudged not to be guilty of Treaſon. Now you may eaſily obſerve the Difference in this Caſe: If a Man be *non compos*, it excuſes him from Felony, and all other Crimes. That Man can't be criminal that has not the Uſe of his Reaſon; but can that be applied to any one that is drunk? That Matter is ſtated in the ſame Caſe: He ſays, if a Man will make himſelf drunk, ſhall this voluntary, this criminal Incapacity of his Mind, excuſe him? No; he ſays it ſhall not: And it would be of dangerous Conſequence if it ſhould. Indeed, his being drunk might make him more forward than otherwiſe he would have been; but you ſee he had Senſe enough to get between the Guards and the Wall, and to attack the Captain when he was paſſed by him. If he can't be criminal unleſs his Mind be ſo, I would ask, If he had killed the Captain, would it not have been Murder? If ſo, then if the Act be Treaſon, he would be guilty notwithſtanding his Drunkenneſs. Therefore, if you do believe he committed the Facts, there is no Regard to be had to his Drunkenneſs. If the Witneſſes don't contradict one another, but they may be reconciled, you need not then weigh which Side you moſt credit; but if you think they can't be reconciled, but that the Witneſſes overthrow one another, then you muſt conſider which of them is of moſt Weight: But if they can be reconciled, I think where ſuch a Conſtruction can be put on it, it ought to ſtand.

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Then the Jury withdrew, and found a ſpecial Verdict of the following Tenor, *(viz.)* That on the firſt of *March*, in the eighth Year of the Queen, a Multitude of People, to the Number of five hundred, aſſembled in a Warlike Manner, with Swords, Clubs, and other Arms, offenſive and defenſive, in the Pariſh of St. *Clement Danes*, in the County of *Middleſex*, under Pretence of pulling down Meeting-Houſes, and rifling them, and having pulled down the Pulpits, Pews, and Furniture of ſeveral, they proceeded to rifle that in *Drury-Lane*, and were burning the Materials of it in the Street when the Priſoner, *George Purchaſe*, came thither with his Sword drawn, and encouraged the People to burn them; but the ſaid *George Purchaſe* was not with the ſaid People before, and was at that Time much in Drink. *A ſpecial Verdict found.*

And they further ſay, That the Guards coming to diſperſe the People at the ſaid Fire in *Drury-Lane*, *Purchaſe* aſſaulted the Captain of the Guards with his Sword, and ſtruck ſeveral of the Horſes of the Guards with his Sword; and being told, *That he that reſiſted the Guards reſiſted the Queen*, anſwered, *Are you an Enemy to* Sacheverell? and led the People on againſt the Guards, crying, *I am for High Church and* Sacheverell: *Come on, Boys! I will loſe my Life in the Cauſe, and will fight the beſt of them:* And that the general Cry of the People, while they were rifling the Meeting-Houſes, was, *High Church and* Sacheverell!

But whether, upon the whole Matter, the ſaid *George Purchaſe* was guilty of High Treaſon, they left to the Court.

The Judges, it ſeems, were moſt of them of Opinion, that the Fact, as found by this ſpecial Verdict, was High Treaſon; but Her Majeſty granting *Purchaſe* a Pardon, Judgment was never given again the Priſoner. *No Judgment given.* Purchaſe *pardoned.*

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Remarks on the Trials of Dammaree *and others.*

The Ides of *March* were not more fatal to *Cæsar* and his Friends than to ſome modern Stateſmen, who being arrived at the Meredian of Power, and looking upon themſelves to be as firmly eſtabliſhed as ever *Cæsar* was, did by one wanton Proſecution, in which they vainly propoſed to have triumphed over Church and State, Prince and People, draw upon themſelves the Indignation of all Mankind, and were precipitated from that Height of uſurped Dominion, which had in a Manner turned their Heads, and rendered them incapable of cool Advice.

No Doubt but it is High Treaſon and Rebellion in the People, to attempt a Redreſs of their Grievances by Force. The Doctrine of *Non-Reſiſtance*, unleſs in ſome very extraordinary Caſes, is eſtabliſhed both by Law and Goſpel: But both Whigs and Tories ſeem to agree, that if either King, Lords or Commons, endeavour *ſeparately* to ingroſs the whole Legiſlative Power, and enſlave the other two, as well as the People in general, and conſequently to overturn the Conſtitution; then ſuch Uſurpers may be reſiſted, and reduced within due Bounds: And it is the Duty of every Subject to aſſiſt in reſtoring the Conſtitution to its Primitive Form. This was reſolved at the Revolution, in the Caſe of King *James*. And when the Lords and Commons aſſumed the Soveregn Legiſlative Power in 1641, it is held that no Man was obliged to ſubmit to them: Reſiſtance, to their uſurped Authority, was lawful and commendable: Nay, it has been the avowed Principle of the Whigs, till very lately, That if King, Lords and Commons *united*, ſhould endeavour the Subverſion of the Conſtitution, by conſenting to a Law to make the King abſolute, that ſuch a Law would be void: The People are not bound to obey it, but may call their Repreſentatives to Account for a Breach of Truſt, and fix the Government upon its ancient Baſis, or ſtrike out any other Form that pleaſes them better, the People being the Original of Power, and the laſt Reſort in all ſuch extraordinary Caſes. But though I cannot come entirely into theſe Notions, yet ſhould a Cabal, or Junto of Miniſters, find Means to impoſe upon their Prince, and under Pretence of eſtabliſhing his Prerogatives, and promoting the Welfare of the Kingdom in His Name aſſume an Arbitrary Dominion; and, by bribing Members with Places and Penſions, or the Expectation of them, procure the Concurrence of a Majority to eſtabliſh a deſpotick Power: Whether, in ſuch a Caſe, Reſiſtance would not be as lawful, as where the People are in Danger of being enſlaved by Force, either by the Prince, or by either or both Houſes, may be a Moot Point.

It is certain that a great Part of the Nation was of Opinion, that the Queen was deceived in ſome of Her Miniſters as well as Dr. *Sacheverell:* That they apprehended the Throne was ſo ſurrounded by them and their Creatures, that no others could have Acceſs to Her Majeſty: That they kept Her in a kind of Durance and Dependance, and would not ſuffer her to diſpoſe of any Poſt, Civil or Military, without their Advice and that both the Queen and Her Subjects were in a manner Slaves to the Junto; and if this were Fact Will any Man ſay, That ſuch a Miniſtry might not be reſiſted as well as the Prince, or either Houſe of Parliament, that ſhould aſſume an abſolute Dominion over the reſt of the Nation? If the Queen's Name was made uſe of, as that of ſome of our Kings have been, to the Deſtruction both of Prince and People, could thoſe who endeavoured to reſcue Her Majeſty and themſelves from ſuch an inglorious --------- Servitude, be termed Rebels and Traitors? Where our Liberties are invaded by open Force, all Parties agree, the People are authorized to reſiſt: And does it alter the Caſe much, if we are enſlaved by Fraud, by Bribery, Hypocriſy, Lying, and other deteſted Arts? If a People loſe their Liberties, will it be any Satisfaction, that they were impoſed upon, and tricked out of them, and not ſubdued by Force?

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It is the Opinion of ſome, that if Doctor *Sacheverell* had not alarmed the Nation, a certain Cabal would have been ſo firmly eſtabliſhed, that both the Queen, and Her Succeſſors, would have been obliged to obey their Dictates, and would have enjoyed little more than the Name of Sovereignty; and that the Conſtitution had been entirely alter'd: And 'tis obſervable, how ſtrenuouſly the Managers themſelves maintained, that Reſiſtance was not only lawful, but heroical, when it was intended to ſave a ſinking Conſtitution; provided there were a Majority of the People of the Opinion of the Doctor's Mob: Therefore theſe Tumults muſt have been lawful and commendable, according to that favourite Doctrine, *That the People are the Original of Power, and that it devolves on them again, whenever they imagine their Repreſentatives betray their Truſt.* It appears very evident from the Queen's Conduct, that She was far from imagining this Rebellion, as it was called, was intended againſt Her: She ſeemed convinced, the People intended no more than to reſcue her out of the Hands of thoſe that would have made a Prey of Her, for She did not only Pardon thoſe that were convicted, *but diſplaced the Men* who were the Authors of theſe Proſecutions. The People alſo, when they were left at Liberty, ſoon diſcovered their Sentiments of theſe Proſecutions in their next Choice: So that it appears, the Doctor's Friends had both the Queen and People of their Side. How then could the *Reſiſtance* that was made to a Cabal, which would have enſlaved both Prince and People, and ſubverted the Conſtitution, be termed Rebellion: If we pay any Regard to the Arguments of the learned Managers, thoſe avowed Patrons of the Doctrine of Reſiſtance? And 'tis remarkable of this Mob, that it was the moſt inoffenſive that was ever raiſed: For except the Pews and Furniture of three or four Meeting-Houſes, no Manner of Hurt or Violence was offered to any one Perſon whatever.

The Queen was much more in Danger from the Cabal themſelves, if Biſhop *Burnet* is to be believed, who ſays, *that he charged the*

Queen

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Queen with being about to deliver up her People, to be ſacrificed after Her Death, and threatned Her if ſhe perſiſted in it, that the People would depoſe her, and bring in the Hanover *Family in her Life-time, in which he would aſſiſt them:* Surely the Queen could not have greater Enemies than theſe, who repreſented Her in ſuch odious Colours, in order to ſpirit up the People to dethrone Her, as the Biſhop himſelf confeſſes. They had Recourſe alſo to other Arts, to deter the Queen from making a Change in the Miniſtry. They brought a Deputation from the Bank, to repreſent to her Face the Hazard She run in doing it, Sir *Gilbert Heathcote*, Governor of the Bank, *Nathaniel Gould*, Deputy-Governor, Sir *William Scawen*, and *Francis Eyles*, Directors, were introduced to Her Majeſty, and affirmed, That the publick Credit could not be ſupported, if ſhe changed *any* of Her Miniſters; and the Queen proceeding to make ſome Alterations contrary to the Advice of theſe Wiſe Citizens, They prevailed on the Imperial and *Dutch* Miniſters to make another Attack on their Sovereign, who, in Purſuance of their Inſtructions, laid before the Queen the diſmal Conſequences the Change of Her Miniſtry would have on her Affairs abroad; Which Affront Her Majeſty juſtly reſented, and told the *Dutch* Envoy, *She was ſurprized his Maſters ſhould take upon them to direct Her what Servants ſhe ſhould employ, and that this was the greateſt Inſult that was ever offered to the Crown of* England *by a Foreign Power.*

1710. 9 Annæ.

However, Biſhoy *Burnet* ſays, he ventured afterwards to reprove the Queen to her Face, for diſmiſſing her old Miniſtry: He told Her (he ſays) *Her Miniſters had ſerved her with that Fidelity and Succeſs, that her making a Change in them would amaze all the World.*

1715. 2 Geo. I.

The Trial of Lord Derwentwater, *&c.*

Proceedings on an Impeachment for *High-Treaſon*, againſt JAMES Earl of *Derwentwater*, WILLIAM Lord *Widdrington*, WILLIAM Earl of *Nithiſdale*, ROBERT Earl of *Carnwath*, WILLIAM Viſcount *Kenmure*, and WILLIAM Lord *Nairn*, before the Houſe of Peers, in *Weſtminſter-Hall*, on *Thurſday*, the 9th of *February*, 1715. 2 *Geo.* I.

1715. 2 Geo. I.

The Impeachment.

THE Articles of Impeachment ſet forth, That for many Years paſſed, there had been a wicked Deſign formed, to ſubvert the Government, extirpate the Proteſtant Religion in this Kingdom, and to introduce Popery: In which Conſpiracy, many Proteſtants, pretending an uncommon Zeal for the Church of *England*, had joined: But that God, in his good Providence, had raiſed up King *William*, and made him the glorious Inſtrument of ſettling the Proteſtant Succeſſion in the Houſe of *Hanover*; ſince which, the Conſpirators had been indefatigable in their Endeavours to deſtroy the ſaid Eſtabliſhment, and make Way for a Popiſh Pretender; particularly in the laſt Years of the Reign of Queen *Anne*, when the holy Scriptures were wreſted, and the moſt wholeſome Doctrines of the Church of *England* perverted, by Men in holy Orders, in order to condemn the Juſtice of the Revolution, and undermine the Foundation of the ſaid happy Eſtabliſhment; and the moſt notorious Inſtruments of theſe wicked Purpoſes were countenanced, by particular Marks of publick Favour and Diſtinction: Falſe and dangerous Notions of Hereditary Right were propagated and incouraged by Perſons in the higheſt Truſts and Employments; and, to conceal their Deſigns, Multitudes of People, of all Ranks, pretending a Zeal for the Proteſtant Succeſſion, voluntarily took the Oaths for the Security of the ſaid Eſtabliſhment; but, at the ſame Time, fomented groundleſs Fears of the Danger of the Church of *England*, to diſorder the Minds of well-diſpoſed Proteſtants.

That they proceeded to procure a Diſſolution of the late glorious Confederacy againſt *France*, and clapped up an ignominious Peace with the *French* King, whereby the Proteſtant Succeſſion was reduced to the moſt imminent Danger: And by theſe and other pernicious Meaſures, the Deſtruction of theſe poor Nations, ſo long intended by the ſaid Conſpirators, ſeemed near at Hand.

In which deplorable Circumſtances, it pleaſed God providentially to take off the late Queen *Anne*, and bring his preſent Majeſty to the Throne of his Anceſtors, to which he was received with one full Voice and Conſent of Tongue and Heart, and the united Joy of every good Subject and good Proteſtant, as their only lawful and rightful Liege Lord. And although his Majeſty's Reign had been one continued Series of Wiſdom, Juſtice, and Clemency; his Labours conſtant, unwearied, and ſucceſsful, to retrieve the Honour of the Nation, and re-eſtabliſh Trade; *And although he had given all imaginable Encouragement to the Church of* England, *&c.* Nevertheleſs the Conſpirators had renewed their Endeavours to throw this Kingdom into the utmoſt Confuſion, under falſe Pretences of Zeal for the Church of *England*; and did contrive and confederate to put their ſaid wicked and traitorous Deſigns in immediate Execution: For which Purpoſe, *James* Earl of *Derwentwater*, *William* Lord *Widdrington*, *William* Earl of *Nithiſdale*, *George* Earl of *Wintoun*, *Robert* Earl of *Carnwath*, *William* Viſcount *Kenmure*, and *William* Lord *Nairn*, together with *Thomas Forſter*, *jun.* the Lord *Charles Murray*, *Edward Howard*, *Thomas Errington*, *John Clavering*, *William Shaftoe*, Sir *Francis Anderton*, *Ralph Standiſh*, *Richard Townley*, *Thomas Butler*, *Thomas Walton*, *Gabriel Haſket*, *Richard Gaſcoigne*, and divers other Perſons, as falſe Traitors to his preſent moſt ſacred Majeſty King *George*; did, in or about the Months of *September*, *October*, or *November*, 1715, moſt wickedly, maliciouſly, falſely, and traitorouſly, imagine and compaſs the Death of his moſt ſacred Majeſty.

And

1715. 2 Geo. I.

And for the accompliſhing and executing their ſaid traitorous Purpoſe, they, the ſaid *James* Earl of *Derwentwater*, and *William* Lord *Widdrington*, *William* Earl of *Nithiſdale*, *George* Earl of *Wintoun*, *Robert* Earl of *Carnwath*, *William* Viſcount *Kenmure*, *William* Lord *Nairn*, did, in or about the ſaid Months, or ſome of them; and at divers other Times, and in divers Places within this Kingdom; wickedly and traitorouſly agree, confederate, conſpire, and reſolve, together with many other evil-diſpoſed Perſons, to raiſe, excite, and levy, within the Counties of *Teviotdale*, *Northumberland*, *Cumberland*, and the County-Palatine of *Lancaſter*, and elſewhere, within this Kingdom, a moſt cruel, bloody, and deſtructive War againſt his Majeſty, in order to depoſe and murther his ſacred Majeſty, and to deprive him of his Royal State, Crown, and Dignity.

And the ſaid *James* Earl of *Derwentwater*, *William* Lord *Widdrington*, *William* Earl of *Nithiſdale*, *George* Earl of *Wintoun*, *Robert* Earl of *Carnwath*, *William* Viſcount *Kenmure*, *William* Lord *Nairn*, their Accomplices and Confederates, in or about the Months aforeſaid, in the Counties aforeſaid, or ſome of them, did gather together great Numbers of his Majeſty's Subjects, and with them did aſſemble in a warlike and traitorous Manner, in order to raiſe Tumults and Rebellion within this Kingdom, and procured great Quantities of Arms, Ammunition, and warlike Inſtruments, at the Times and Places aforeſaid, or ſome of them; and did form and compoſe, or did aſſiſt in the forming and compoſing an Army of Men, conſiſting of his Majeſty's Liege Subjects, in order to wage War againſt his ſaid Majeſty, for, and in Behalf, and in Favour of the ſaid Pretender to the Crown of theſe Realms; and the ſaid laſt-mentioned Conſpirators, their Accomplices and Confederates, at the Time and Times, and Places aforeſaid, and at divers other Times and Places within this Kingdom, did maliciouſly and traitorouſly make, levy, and raiſe War and Rebellion againſt his moſt ſacred Majeſty; and, in a warlike and hoſtile Manner, did march through and invade ſeveral Parts of this Kingdom, and did unlawfully take and ſeize the Horſes, and other the Goods and Chattels of many of the peaceable and good Subjects of his Majeſty; and in other Places, did take and ſeize from his Majeſty's faithful Subjects, Guns, and other warlike Inſtruments, for the carrying on their traitorous Purpoſes.

And the ſaid laſt-mentioned Conſpirators, their Accomplices and Confederates, during their March and Invaſion aforeſaid, in open Defiance of his moſt ſacred Majeſty's juſt and undoubted Title to the Imperial Crown of theſe Realms, did wickedly and traitorouſly cauſe and procure the ſaid Pretender to be proclaimed in the moſt publick and ſolemn Manner, as King of theſe Realms; and, in ſeveral Places, in the Counties aforeſaid, or ſome of them, did unlawfully take and ſeize from his Majeſty's Officers of the Revenue, the publick Money, for the Uſe and Service of the ſaid Pretender; and though many of the ſaid Conſpirators were avowed Profeſſors of the Popiſh Religion, yet, the more effectually to cover and diſguiſe their moſt wicked and traitorous Deſigns, and to delude his Majeſty's Subjects, they did prevail on, and procure ſeveral Men in holy Orders, Miniſters of the Church of *England*, and who had, before that Time, abjured the ſaid Pretender, to accompany, countenance and abet the ſaid moſt traitorous Enterprize; and, in ſeveral Places, in the Counties aforeſaid, where the ſaid Conſpirators, their Accomplices and Confederates then were, to pray for the ſaid Pretender, in publick Churches, as King of theſe Realms.

1715. 2 Geo. I.

And the ſaid laſt-mentioned Conſpirators, their Accomplices and Confederates, did, in or about the 9th, 10th, 11th, 12th, or 13th of *November* aforeſaid, traitorouſly ſeize and poſſeſs themſelves of the Town of *Preſton*, in the County-Palatine of *Lancaſter*, againſt his Majeſty, and did then and there, in a warlike and hoſtile Manner, levy War, oppoſe, engage, and fight againſt his Majeſty's Forces; and did then and there cauſe and procure a miſerable and horrid Slaughter and Murther of many of his Majeſty's faithful Subjects; againſt the Duty of their Allegiance, *&c.* Of all which Treaſons, the Knights, Citizens, and Burgeſſes, in Parliament aſſembled, did, in full Parliament, impeach the ſaid Earl of *Derwentwater* and his ſaid Accomplices.

The Lords Anſwer to the Impeachment.

To which Articles the impeached Lords put in their ſeveral Anſwers; wherein they endeavour to extenuate their Crimes, by ſhewing, it was a raſh unpremeditated Enterprize; and, though they acknowledged their Guilt, they inſiſted, that they ſurrendered on a Promiſe of their Lives: However, Sentence was pronounced on them as Traitors; and, on the 18th of *February*, 1715-16, Writs for executing the Earls of *Derwentwater*, *Nithiſdale*, and *Carnwath*, the Lord *Widdrington*, the Lord Viſcount *Kenmure*, and the Lord *Nairn*, were delivered to the Lieutenant of the *Tower*, and the Sheriffs of *London* and *Middleſex*.

They confeſs their Guilt, and are condemned.

Petitions to the Parliament, to intercede for them.

On the twenty-ſecond of the ſame Month, they petitioned both Houſes of Parliament, to intercede with his Majeſty on their Behalf; and the Lords addreſſing the King accordingly, his Majeſty anſwered, *That on this, and all other Occaſions, he ſhould do what he thought moſt conſiſtent with the Dignity of his Crown, and the Safety of his People.*

The Lords Addreſs.

The Commons refuſe to interpoſe.

And the Commons adjourning themſelves, to avoid being importuned by the Friends of the condemned Lords; an Order of Council was iſſued on the 23d Inſtant, for the executing the Earl of *Derwentwater*, the Earl of *Nithiſdale*, and the Lord *Kenmure*, the next Day; and the Lords *Derwentwater* and *Kenmure* were executed accordingly, on a Scaffold on *Tower-Hill*, on the 24th of *February*; but the Lord *Nithiſdale* found Means to make his Eſcape the Night before: The other three were reprieved from Time to Time; and at length diſcharged.

Lords Derwentwater *and* Kenmure *executed.*

Lord Nithiſdale *eſcapes.*

The reſt reprieved.

The

The Impeachment of GEORGE Earl of *Wintoun.*

1715. 2 Geo. I.

Earl of Wintoun's *Impeachment. His Answer.*

AN Impeachment also was preferred against the Earl of *Wintoun*, of the same Tenor as the former: In Answer to which, he said, He was forced from his House by the King's Troops, who plundered and demolished it without any Offence given; and he was obliged to take Shelter among the Malcontents in his own Defence, but had no treasonable Design or Intention against his Majesty: That he did not so much as fire a Pistol at *Preston*, or elsewhere; and surrendered himself there to General *Wills*, being conscious of his Innocence.

He acts the Part of an Idiot at his Trial.

He behaved himself at his Trial, which began the 15th of *March*, for the most Part like an Ideot; but insisted, That he surrendered on a Promise of Mercy: Whereupon the Managers for the Commons examined their Witnesses; and proved, that his Lordship was as active in the Rebellion as the rest, and did not appear to be defective in his Senses at that Time: They also produced the Generals and Officers, to prove, that they surrendered at Discretion, and had no Terms granted them: Whereupon the Lords found him GUILTY.

The Facts proved against him.

He is convicted;

moves in Arrest of Judgment,

The Lord *Wintoun* afterwards moved in Arrest of Judgment, *That he was such a Person, against whom, by Law, Judgment ought not to be given*; or, in other Words, That he was *Non compos*; and desired his Counsel, Sir *Constantine Phipps*, might speak to that Point: But Sir *Constantine* beginning to speak, was reprehended for it; and the Lord *Wintoun* was told, That this was a Point of Fact, and not of Law; and that their Lordships were of Opinion, *That he was such a Person, against whom Judgment of Death for High Treason ought to be pronounced.*

he was non compos;

This Exception overruled.

Objects that the Time was not ascertained.

Then the Lord *Wintoun* said, That his Counsel were ready to offer in Arrest of Judgment, *That the Impeachment was insufficient, because the Time of committing the Treason was not laid with sufficient Certainty in the Impeachment.*

His Counsel permited to argue this Point.

Whereupon the Lord High Steward intimating to the Prisoner's Counsel, That they were at Liberty to speak to that Point; Sir *Constantine Phipps* said, We humbly apprehend the Impeachment against the Noble Lord at the Bar, to be insufficient; it is so uncertain, that no Judgment can be given upon it: In Indictments, even for Trespasses, the Law requires the certain Day when the Offence is supposed to be committed to be alledged; and, if a particular Day be not laid, the Indictment is insufficient: And, if such Certainty is required in Offences of the most minute Nature, much more in Capital Crimes; and especially in Treason, with which this Noble Lord is charged.

One Reason why, in Indictments for High Treason, a certain Day should be assigned, is for the Advantage of the Prisoner; that being apprized of the Time when those Facts are supposed to be committed, he may be the better able to make his Defence: He may possibly prove he was in another Place, or in other Company, at the Time he is charged with committing the Treason; or may, by other Circumstances, make his Innocence appear.

Another Reason is for the Benefit of the Crown, that it may be known to what Time the Forfeiture shall relate; for if there be no precise Time alledged in the Indictment, the Forfeiture can relate no further than to the Judgment.

Indictments have been held insufficient for less Faults than not specifying the Day: But I will not trouble your Lordships with citing Authorities: For there is not a Gentleman of the long Robe, but will agree, an Indictment for any Capital Offence is erroneous, if the Offence be not alledged to be committed on a certain Day.

My Lords, an Attainder upon an Impeachment, subjects the Offender to the same Punishment and Forfeitures, as an Attainder upon an Indictment; and there should, therefore, be the same Certainty in one, as in the other: And if equal Certainty be required in both, we submit it to your Lordships, whether this Impeachment be not erroneous and insufficient, there being no certain Time alledged, when the Treason or Overt-Acts were committed.

The Treason alledged, is conspiring and imagining the Death of the King: And the Impeachment sets forth, That this Noble Lord did, in or about the Months of *September*, *October*, or *November*, 1715, together with others in the Impeachment named, traitorously compass and imagine the Death of his most sacred Majesty: That he did, in or about the said Months, or some of them, together with the rest, agree and confederate to levy War against his Majesty: That in or about the said Months, or some of them, this Noble Lord, with others, did levy War, and march through several Parts of this Kingdom, and did proclaim the Pretender to be King: And that on or about the 9th, 10th, 11th, 12th, or 13th of the said Month of *November*, this Noble Lord, with others, did seize and possess themselves of the Town of *Preston*, and fought against his Majesty's Forces.

As to the first Overt-Act: Can any thing be more uncertainly alledged, than to say, That the Conspirators did, in or about the said Months, or some of them, and at divers other Times and Places within this Kingdom, confederate, *&c.* to levy War?

The next Overt-Act, which is actual levying of War, is not laid with greater Certainty. And as to the third, the proclaiming the Pretender, there is no certain Time or Place alledged, when or where the Pretender was proclaimed; but only that it was during their March and Invasion. The last Overt-Act, the seizing of *Preston*, seems to be laid with greater Certainty; but then the Words *or about* leave it at large: For no Man can tell how many Days may be included in these Words *or about*.

We apprehend, a Charge of this High Nature, ought not to be alledged with such Uncertainty;

1716. 2 Geo. I.

tainty; and that the Impeachment is as erroneous as any Indictment would be: I do not pretend to any great Skill in Parliamentary Proceedings; but I never saw a Charge exhibited in any other Court in so uncertain a Manner, unless in Libels in the Ecclesiastical or Admiralty Courts, which cannot influence the Case before your Lordships, this being a Proceeding according to the Course of the Common Law.

The Answer of Mr. Attorney to this Exception.

Mr. Att. Gen. My Lords, we are upon an Impeachment, and not an Indictment. The Courts below have set Forms, which have prevailed for a long Course of Time, and are thereby become the Forms by which those Courts are to govern themselves; but it was never thought, that their Forms had any Influence on the Proceedings of Parliament. In the Reign of *Richard* II. it is said in the Records of Parliament, That Proceedings in Parliament are not to be governed by the Forms in *Westminster-hall:* And though it is usual in the Courts below, to alledge a certain Day, yet they add (and at divers other Days and Times); and that Day which is laid, is not material; for they are not bound to prove the Crime committed on that Day, but may prove the Defendant guilty at any Time, either before or after the Day laid in the Indictment.

As to Dr. *Sacheverell*'s Case, there was an Exception taken to the Impeachment for Uncertainty; and it was argued, from the Forms of the Courts in *Westminster-hall*, That where Indictments were for Words spoke or writ, the Words must be laid as they were spoke or wrote, according to the Opinion of the Judges: But it was resolved to be otherwise in the Court of Parliament; and they were not bound but by their own Forms.

As to their Objection, That there is no Time laid for some of the Overt-Acts, I think there is a certain Day when *Preston* was seized: And, in the inferior Courts, it is held, That it is not necessary there should be a Day and Place alledged for every Overt-Act: We think therefore this Objection has no Weight, especially in the Case of an Impeachment. Your Lordships have already given Judgment against six upon this Impeachment, and it is warranted by Precedents in Parliament: Therefore we insist, that the Articles are good in Substance, and according to the Forms of Parliament.

The Reply of the Prisoner's Counsel.

To this Answer of Mr. Attorney, Sir *Constantine* replied, I don't remember I said the Day laid in the Indictment was material; for I never thought it so material, that there was a Necessity to prove the Treason to be committed upon that very Day: But, I conceive, the Day laid in an Indictment, ought to be very near the Time, if not upon the very Day, the Treason is supposed to be committed: And I take the constant Practice to be so.

All the Gentlemen who have spoke in Answer to me, have admitted, that in Indictments for Treason, a certain Day, is always alledged: But the honourable Gentleman that spoke first, makes a Difference between an Indictment and an Impeachment; because an Impeachment is a Parliamentary Proceeding, and the Parliament is not tied up to such strict Forms as the Courts below: But I submit it to your Lordships Judgment, Whether an Impeachment, by which a Noble Peer is to be attainted, ought not to be as certain as an Indictment, by which a Commoner is to be attainted? And whether by the *Lex Parliamentaria*, as much Certainty is not required in one Case as the other? As to the Impeachment of the Lord *Stafford*, that began with an Account of the Plot in general; and, in that Case, a general Allegation was sufficient: But whether the particular Part which my Lord *Stafford* had in that Plot, be not more certainly alledged, I cannot take it upon my Memory to say: Nor is it material; for it is admitted, that no Objection was made to that Impeachment for the Uncertainty of the Charge: If such an Objection had been made, and over-ruled, it would have been a full Answer to us; but there being no Notice taken of it, our Objection is as strong, as if that Case had never happened. As to that Part of the Impeachment which relates to the taking of *Preston*, though that seems more certain than any other Overt-Act, yet the Words *or about* leave it at large, and render it uncertain.

1716. 3 Geo. I.

Mr. Attorney rejoins.

Mr. Att. Gen. My Lords, the learned Gentlemen now agree, that the particular Day in an Indictment is but Form, and that the Fact may be proved any Day, before or after; consequently the Prisoner gets or loses nothing, by having a Day charged or omitted: He must provide for his Defence, as if no Day was laid: And since it is immaterial in Indictments, it must be so in Impeachments. As to the Answer given of my Lord *Stafford*'s Case, That this Point passed *sub Silentio:* If that Impeachment had not been thought good, he had the Assistance of learned Counsel, well able to advise him; and who certainly would have taken the Exception. Here is no Uncertainty that can be to the Disadvantage of the Prisoner: The Impeachment is agreeable to the Forms of Parliament; he has pleaded to it, and your Lordships have found him guilty.

Then the Lord High Steward demanding of the Lord *Wintoun*, If he had any Thing else to offer in Arrest of Judgment? Lord *Wintoun* answered, If you please to ask my Counsel, they will tell you. The Lord High Steward replied, You have been told often, that the Point you would have your Counsel speak to, must be proposed by yourself: Whereupon Lord *Wintoun* answered, Since your Lordship will not allow my Counsel, I know nothing; *and then the Court adjourned.*

The Court sitting again at Five in the Afternoon, the Lord High Steward informed the Prisoner, That what he had moved in Arrest of Judgment was over-ruled: And having made a Speech upon the Occasion, pronounced Sentence on the Lord *Wintoun* as a Traitor.

The Prisoner having been reprieved from Time to Time, made his Escape out of the Tower, *on the 4th of* August, 1716, *and went over to* France.

It being as much too soon to make Remarks on the Trials of the last Reign, as to write the History of it, I shall only give a short Abstract of the remaining Trials, as I have done of this, and defer giving a fuller Account of them to a more convenient Season.

The

1716. 3 Geo. I.

The Trial of FRANCIS FRANCIA (generally esteemed a *Jew*) for *High-Treason*, at the *Old-Baily*, *London*, on the 22d of *January*, 1716. 3 Geo. I.

1716. 3 Geo. I.

Francia's Trial.

The Indictment.

HE was indicted by the Name of *Francis Francia*, of *London*, Merchant, of High Treason, in compassing the Death of the King; and, for that End, consulting with divers other Traitors, to raise a War and Rebellion in the Kingdom, in Favour of the Pretender: He was also charged with soliciting to procure Arms, Ammunition, and Money from *France*, to support the said War; and with composing and writing several treasonable Letters, signifying the Resolutions of himself and his Accomplices, and requiring the Aid of Foreigners in the said intended War; and with sending the said Letters beyond Sea, and causing them to be delivered to their Correspondents in *France*; against the Duty of his Allegiance, *&c.*

The Evidence against him his Letters.

The principal Evidence against *Francia*, were some *French* Letters directed to him, and a Book wherein he entered his Foreign Letters; which the Messenger found in a Closet in his Room, when he apprehended the Prisoner. *Francia* acknowledged that he received those Letters which were directed to him: And that some of the Letters in the Book were entered by himself, and some of them by his Son.

In the Prisoner's Examination also before the Secretaries of State, which was read in Evidence against him, he confessed, That he received several Letters in Covers from the Abbot *Butler*, directed to Mr. *Edward Harvey* of *Combe:* And that he conveyed several Letters from Mr. *Harvey* to the Abbot: That he conveyed Letters also from Mr. *Harvey* to the Abbot: That he conveyed Letters from Mr. *Harvey* to the Duke *D'Aumont* in *France*, directed to M. *D'Aulmay*, alias *Payen*, at *Paris*, and received Letters from Duke *D'Aumont* for Mr. *Harvey*.

That about two Months since, this Method was altered; and *Payen*, instead of inclosing the Answers to Mr. *Harvey* in Covers, wrote only to the Prisoner, directing him to shew the Letters to Mr. *Harvey*, which he did.

That in these Letters directed to the Prisoner, and ordered to be shewn Mr. *Harvey*, he understood the initial Letters *M. H.* stood for Mr. *Harvey*, *D. D.* for the Duke of *Ormond*, and *M. B.* for my Lord *Bolingbroke: And he verily believed, the Subject of these Letters was the Design of the Pretender to invade his Majesty's Dominions:* And, in another Examination, he deposed, That a Letter of Mr. *Harvey*'s was left with him to be forwarded to the Abbot *Butler* in *France*, (which was found in the Prisoner's Custody): And that he believed by the Number 22 in his Letter was meant Duke *D'Aumont*, by No. 6. the late *French* King, by No. 17. the Tories, by No. 8. the Pretender, by No. 9. his Majesty.

Then the said Original Letter of Mr. *Harvey*'s was read; wherein he shews a great Regard for the Interest of the *French* King and the Pretender. Several of the Letters from *Payen* to the Prisoner, with the Copies of his Answer to them entered in the Prisoner's Book, were read also; wherein the Prisoner himself seems solicitous for the Pretender's Interest, and laments the Loss they had sustained by the Death of the *French* King.

The Prisoner's Exceptions to the Indictment.

After the reading these Letters, the Prisoner's Counsel took Exceptions to the Indictment, That he was indicted as a Native of *England*; whereas he was, in Truth, an Alien; and produced Witnesses to prove he was born at *Bourdeaux* in *France*.

Proves he was an Alien.

His further Defence by his Counsel.

His Counsel also observed, That there was nothing of the Treason in the Letters entered in his Book: And as to what was contained in the Letters he received, if there was Treason in them, that could not affect him; he could not help People's directing Letters to him: However, a great Part of the Letters concerned only Horses and Dogs, and a Suit in *Chancery*; and they could prove that the Book was not wrote by him. They also produced Witnesses to shew the Prisoner was threatened and tampered with by some great Men, and received Money of them to accuse Mr. *Harvey:* They observed also that Mr. *Harvey*, who was represented to be the Promoter of this treasonable Correspondence, was at Liberty, and not so much as brought to a Trial; from whence they inferred, the Government did not imagine this Correspondence to be treasonable.

They insinuated also, That *Francia* was wheedled to sign his Examination, and promised, that it should not be produced as Evidence against him.

The Reply of the King's Counsel to his Defence.

To this Defence, the King's Counsel replied, That the Evidence consisted of Letters wrote by the Prisoner to his Correspondents in *France*; and of Letters wrote to him by those Correspondents, signifying, the Receipt of Letters wrote by the Prisoner, touching this traitorous Design: That for Proof of the Letters wrote by the Prisoner, they had produced his own Copy-Book, wherein they were entered by himself or his Son; which was, indeed, so rare a Way of perpetuating the Testimony of Treason, as he thought the like Evidence was never to be expected again.

That they had produced the original Letters from *D'Aulmay* to him, and which he confessed to have received: That these were an Evidence that the Prisoner sent such Letters as are mentioned in *D'Aulmay*'s Letters; for these were Answers to them, and tallied exactly as to Dates, Circumstances, and Subject.

That if the Prisoner had received but one treasonable Letter, his concealing it would have been but Misprision of Treason: But receiving so many, in every one of which the Writer charges him with writing High Treason; and the Prisoner preserving and concealing these Letters, was a strong Evidence of his Approbation and Assent to that Treason: And so it is, where a Man falls accidentally into the Company of Traitors, and hears treasonable

1716. 3 Geo. I.

ſonable Diſcourſes, this is but Miſpriſion, if he conceals it; but if he meet them a ſecond Time at their treaſonable Conſults, he is guilty of High Treaſon, becauſe this ſhews an Approbation of the Thing, as was reſolved in Sir *Everard Digby*'s Caſe.

And though it had been objected, he was not anſwerable for what others wrote; this was a Miſtake: For if what was written was Treaſon, it was his Duty to diſcloſe it; and, if he did not, but continued to receive ſuch Letters, it was a clear Proof of his traitorous Correſpondence, and by that he made the Treaſon his own: And though it was pretended, he was only the Conveyer of Mr. *Harvey*'s Letters, the contrary appeared from the Letters themſelves; and ſhewed, that the Correſpondence was his own, and carried on by himſelf.

And as to the Intention of theſe Letters, though it was ſaid, they related to Dogs and Horſes; it was true, one of Mr. *Harvey*'s Letters was about Dogs and Horſes; but even in that, there was a good deal of Treaſon intermixed: And as to his own Letters, it was not to be expected in a treaſonable Correſpondence, that Men ſhould ſpeak out plain; ſome Cant was neceſſary to dreſs it up in. Neither he, nor his Counſel, had offered at the Interpretation of above one in the whole Packet; and that they would interpret contrary to the very Grammar and Senſe of it: But was the Meaning of theſe Letters doubtful; He himſelf ſufficiently explained them, when he confeſſed the Subject Matter of them to be, *the Deſign of the Pretender to invade his Majeſty's Dominions.*

The Chief Baron's Directions to the Jury.

The Lord Chief Baron then ſummed up the Evidence, and obſerved, That if a Man is privy to a treaſonable Deſign, and aſſents to it, and contributes to the carrying it on, it is High-Treaſon: Indeed where one had only a bare Knowledge of it, without any other Concern in it, and concealed it, that was but Miſpriſion of Treaſon.

1716. 3 Geo. I.

He ſaid, it was plain from the Letters, that the Cauſe of the Pretender was one, and the Cauſe of the Law-Suit another; and theſe Letters containing ſuch treaſonable Matter, and being written to him, and found in his Cuſtody, was a ſtrong Evidence of his aſſenting and contriving to bring the Pretender over, and of his having writ ſuch Letters as were mentioned to be received from him.

As to the Priſoner's being an Alien born, he thought the Proof was ſtrong, and therefore they ſhould find that Matter ſpecially, for the Judgment of the Court, and find the other Fact: And if they believed he did promote the Invaſion, or concealed and aſſented to that Deſign, that was a conſpiring the King's Death, and the Priſoner was guilty of the Treaſon charged in the Indictment.

That as to the Threats and Promiſes made to *Francia*, by my Lord *Townſend* or Mr. *Buckley*, they had abſolutely denied it, and their Credit muſt be weighed againſt *Simon Francia* and the two Women who had ſworn it.

That it was not material in whoſe Hand the Copy-Book of Letters were written, if it contained the Copies of his Letters, as he had acknowledged. He concluded, that if they believed the Letters to be wrote to him, and by him, and that they contained a Correſpondence of a treaſonable Nature, inciting or encouraging a War againſt the King, or any Thing that ſhewed he was privy and aſſenting to it, then he was guilty of High-Treaſon; but if they did not believe they were his, or that they did not amount to ſuch a Correſpondence, then they muſt acquit him.

Then the Jury withdrew, and returning into Court after ſome Time, gave their Verdict, that the Priſoner was NOT GUILTY.

He is acquitted.

1717. 3 Geo. I.

Earl of Oxford's Trial.

Proceedings againſt ROBERT Earl of *Oxford* and Earl *Mortimer*, upon an Impeachment for *High-Treaſon, and other High Crimes and Miſdemeanors*, before the Houſe of Peers, in the Months of *May* and *June*, 1717. 3 *Geo.* I.

1717. 3 Geo. I.

Articles againſt him.

THE firſt Article of Impeachment charged, That the ſaid Earl, being devoted to the *French* King, although he was then Lord Treaſurer, and a Privy Counſellor, in Breach of his Oath, and in Defiance of the ſeveral Treaties made with the Allies, the frequent Advices of Parliament, and the Declarations of Her Majeſty, did, in the Months of *July* or *Auguſt*, 1711, maliciouſly form a treacherous Confederacy with other evil-diſpoſed Perſons of the Privy Council, to make a ſeparate and deſtructive Peace with *France*, without communicating the ſame to the Allies; adviſed the Queen to ſend *Matthew Prior* to *France* in a clandeſtine Manner, to make Propoſitions, in which the particular Intereſts of *Britain*, and the common Intereſts of *Europe*, were betrayed, and an Article inſerted, that the Secret ſhould be inviolably kept from the Allies; and thereby put it in the Power of *France* to create Jealouſies between Her Majeſty and her Allies, and deſtroyed that Confidence which had ſo long ſubſiſted between them.

2. That the *French* King thereupon ſending Mr. *Meſnager* to *England*, in *Auguſt* or *September* following, a ſeparate Treaty was ſigned by the ſaid *Meſnager* on the Part of *France*, and by the Earl of *Dartmouth* and Mr. *St. John*, two of Her Majeſty's Secretaries of State, on Behalf of Her Majeſty, by Virtue of her Sign-Manual only; in which Treaty the Intereſts of *Britain* were given up to *France*, and the Duke of *Anjou* admitted King of *Spain*. And thus the Earl had aſſumed Regal Power, in treating with the Enemy without ſufficient Authority from Her Majeſty; and by the ſaid ſeparate Treaty did what in him lay to diſſolve the many ſolemn Treaties Her Majeſty ſtood engaged in to her Allies.

3. That the Earl, with others, contrived a Set of general Preliminaries, to be ſigned by *Meſnager*,

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Meſnager, only adviſing Her Majeſty to communicate them to the Miniſters of the Allies as the Ground of a general Peace, and concealed the Treaty, ſigned, as aboveſaid, by the ſaid *Meſnager* and the Secretaries of State.

4. That the ſaid Earl did declare in her Majeſty's Name, to the Miniſters of the Allies, That ſhe had made no ſeparate Treaty with *France*, nor would make any, before ſhe had complied with all her Engagements to her Allies, and given them an Opportunity of making good their Pretentions; by which falſe Aſſurances he had diſhonoured Her Majeſty, by whoſe Privity the ſaid ſeparate Treaty with *France* had been ſigned, and Her Allies groſly abuſed.

5. That he gave Inſtructions to the Biſhop of *London* and the Earl of *Strafford*, Her Majeſty's Plenipotentaries, to inſiſt that *Spain* and the *Weſt-Indies* ſhould not be allotted to the Houſe of *Bourbon*; whereas the Earl had at that Time privately agreed with *France* that *Spain* and the *Weſt-Indies* ſhould remain to the Houſe of *Bourbon*, and prevailed with Her Majeſty to be a Party to the ſaid private Treaty.

6. That Conferences being opened upon the mutual Engagements of the Allies, to act in Concert, and promote their common Intereſt, the Earl and his Accomplices did, notwithſtanding, afterwards promote a ſeparate Negotiation of Peace with *France*, without communicating it to the Allies; and did concert with the Enemy Terms of Peace prejudicial to the Intereſt of her Majeſty and her Allies; whereby the good Effects of the ſaid general Negotiations were defeated.

7. That he conſented *Spain* ſhould remain to the Houſe of *Bourbon*, on condition the Duke of *Anjou* ſhould renounce his Right to the Kingdom of *France*, though it had been declared by the Miniſters of *France* that ſuch a Renunciation would be invalid.

8. That he conſented to the ſending an Order to the Duke of *Ormond*, her Majeſty's General, not to fight the *French*; and to the ſending Orders to the Biſhop of *Briſtol*, her Majeſty's Plenipotentiary, to declare to the *Dutch* Miniſters, that her Majeſty, from their Conduct, looked upon herſelf to be under no Obligations to them; and adviſed her Majeſty to diſregard the Repreſentations made to her by the *Dutch* on thoſe Heads; whereby the Progreſs of the Arms of the Allies was ſtopped, and the moſt favourable Opportunity loſt of conquering the Enemy; the Confidence between her Majeſty and her Allies was deſtroyed, the *French* King made Maſter of the Negotiations, and the Affairs of *Europe* given into his Hands.

9. That he cauſed the *Britiſh* Troops to ſeparate from thoſe of the Allies, and refuſed to pay the Auxiliaries that refuſed to withdraw with them; and by that Separation the Allies were ſacrificed to the *French* at *Denain*, and the Towns of *Queſnoy*, *Bouchain*, and *Doway* were loſt.

10. That he adviſed the Queen to ſend over Lord *Bolingbroke* to *France*, to ſettle a Suſpenſion of Arms, before any Terms of Peace were made, whereby the Safety of the Kingdom, and the Proteſtant Succeſſion, was expoſed to the Enterprizes of the Enemy.

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11. That he concerted Meaſures with the Court of *France* for delivering up *Tournay* to them.

12. That he traitorouſly adhered to the Duke of *Anjou* in the Years 1710, 1711, and 1712, when that Prince was an Enemy to this Kingdom, and promoted the yielding up of *Spain* and the *Weſt-Indies* to him.

13. That he ſacrificed the Commerce of *Great Britain* to *France*; and particularly conſented to their Fiſhing at *Newfoundland*, and the yielding up of the Iſland of *Cape Breton* to them.

14. That he conſented to the yielding up of *Sicily* to the Duke of *Savoy*, in Prejudice to the Emperor, and ordered the *Britiſh* Fleet to aſſiſt in putting the Duke in Poſſeſſion of that Iſland.

15. That he had impoſed on her late Majeſty, and induced her to break her Royal Word, given to her Parliament and to her Allies, in ſeveral Inſtances; as, where he made her ſay in a Speech, *That the States General expreſſed an entire Confidence in her Negotiations; that ſhe would do her utmoſt to procure every one of her Allies Satisfaction*, &c. and yet at that Time a ſeparate Negotiation had been carried on between *Britain* and *France* for five or ſix Months. That by indirect Arts he had obtained the Approbation of Parliament to his dangerous Practiſe, and expoſed her Majeſty and her People to the Contempt of the common Enemy.

16. That the Houſe of Peers having given their Opinion to her Majeſty, that no Peace could be ſafe or honourable, if *Spain* and the *Weſt-Indies* were allotted to the Houſe of *Bourbon*; the Earl, to prevent the good Effects of that Advice, and in order to obtain ſuch further Reſolutions on the Subject of Peace as might promote his ſecret Negotiations, adviſed her Majeſty to create twelve Peers, who took their Seats on the 2d of *January*, 1711, to which Day the Houſe ſtood adjourned; by which deſperate Advice he perverted the true End of the Prerogative, to the Diſhonour of the Crown, and the ſubverting the Conſtitution of Parliaments.

The Commons afterwards exhibited ſix additional Articles againſt the Earl, of the following Tenor:

1. By the firſt of which they charged him, with adviſing the Queen to make a Detachment from her Troops in *Flanders*, to employ them in the Reduction of *Quebeck* and *Canada* in the Year 1710; and paying 28,000 *l.* on Pretence of purchaſing Arms and Merchandize for that Expedition; and that, when the Enterprize had proved unſucceſsful, and it appeared the Nation had been cheated of 20,000 *l.* he employed his wicked Arts and Credit to prevent the Commons enquiring into it.

2. That he adviſed her Majeſty to ſign a Warrant to *John Drummond*, Eſq; for 13,000 *l.* for ſpecial Services relating to the War, which he afterwards applied to his own private Uſe; and then prevailed on her Majeſty to ſign another Warrant, reciting, that it was for great Services done by the ſaid Earl.

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3. That the ſaid Earl, in *Auguſt* 1712, ſent his Creature *Mat. Prior* into *France*, to carry on a ſeparate Negotiation; prevailed on the Queen to make him her Plenipotentiary and corruptly combined with him to defraud her Majeſty of great Sums of Money; prevailing on her to ſign Warrants for the Payment of 12,360 *l.* to the ſaid *Mat. Prior*, between *Auguſt* 1712 and *July* 1714; which exceeded the Allowance of an Ambaſſador of *Great Britain:* And that he prevailed on her Majeſty to ſign Warrants for the Payment of 5,560 *l.* to *Thomas Harley*, his Emiſſary and near Relation; and for the Payment of divers other Sums to other Perſons; thereby introducing a Practice highly prejudicial to the Conſtitution.

4. Whereas the Revenues of the *Exciſe* and *Poſt-Office* had been charged, by a Grant of the late King *James*, with certain Annuities for the Uſe of Queen *Mary* his Conſort, but were afterwards ſettled by Act of Parliament for the Support of the Royal Houſhold, and other publick Uſes; he the ſaid Earl, notwithſtanding, ſoon after the Concluſion of the Peace, holding a Correſpondence with the ſaid Queen, and being in the Intereſt of the Pretender, undertook to procure the Payment of the yearly Sum of 47,000 *l.* to the Uſe of the ſaid Queen Conſort for Life; and did adviſe her Majeſty Queen *Anne*, on the 23d of *December*, 1713, to ſign a Warrant to himſelf, reciting King *James*'s Grant for the Payment thereof; and the next Day the ſaid Earl ſigned a Warrant, requiring the Auditor of the *Exchequer* to paſs Debentures for paying one Quarter of the ſaid Annuity out of the Sum of 500,000 *l.* appropriated by Parliament to the Payment of her Majeſty's Debts; and that he ordered 1000 *l.* to be paid to *Gualatier*, the *French* Agent who negotiated that Affair with him, and was an Emiſſary of the Pretender's.

5. That he adviſed her Majeſty to admit *Patrick Lawleſs*, as a publick Miniſter from *Philip* King of *Spain*, though he was an *Iriſh* Papiſt, and had ſerved in Arms againſt King *William*; introducing him to her Majeſty under the Name of Don *Carlo Moro*; and adviſed Her Majeſty to ſign a Warrant for the Payment of 1000 *l.* to the ſaid *Lawleſs*, and did often negotiate the moſt important Affairs of the Nation with him; and by thus countenancing the ſecret Emiſſaries of the Pretender, did greatly encourage his open Adherents, to the Apparent Danger of the Proteſtant Succeſſion.

6. That he treacherouſly adviſed her Majeſty to conclude a Peace with the King of *Spain*, without any Security for the Rights and Liberties of the *Catalans*; and adviſed Her to ſend Admiral *Wiſhart* with a Squadron of Men of War into the *Mediterranean*, to favour the Reduction of *Barcelona* and the Iſland of *Majorca*; and Her Majeſty, contrary to her ſolemn and repeated Aſſurances, was by the Earl prevailed on to abandon that diſtreſſed People, drawn in and engaged by her own Invitation into a War with the Duke of *Anjou*, for the Preſervation of the Liberties of *Europe*, giving them up a Sacrifice to their enraged Enemy.

For all which the Commons impeached him, *&c.*

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The Earl's Anſwer.

1. To the firſt Article the Earl anſwered, That he was never devoted to the *French* King, or acted contrary to his Duty, in Defiance of Treaties, the Advice of Parliament, or Her Majeſty's Declarations from the Throne; denies that he contrived the ſetting on Foot a ſeparate Peace, or knew of any ſuch; but believes that in *April.* 1711, *France* made ſome Propoſals of Peace, ſigned by Monſieur *Torcy*, Secretary of State to the *French* King, and the States General deſiring the *French* might explain thoſe Propoſals, her Majeſty ſent Mr. *Prior* to *France* to obtain an Explanation of them; but denies he adviſed the Queen to ſend Mr. *Prior* to make Propoſitions of Peace without communicating them to the Allies; and if any Inſtructions were give to Mr. *Prior* for not divulging ſome Propoſitions which concerned *Britain* in particular, it was the undoubted Right of every Member of a Confederacy to demand particular Advantages for themſelves, not inconſiſtent with their Alliances, and which were not to take Place but on the Concluſion of a general Peace; and the States General, in the Treaties of 1709 and 1710, did the like for themſelves: However, he believed the Propoſitions relating to *Britain* were communicated to the Allies, and her Majeſty was ſo far from treating ſeparately, that ſhe invited all Parties to the Congreſs.

2. He admits that Mr. *Meſnager*, in the Year 1711, brought a Letter from the *French* King to Her Majeſty, acknowledging Her Queen of *Great Britain*, and therein expreſſed his Deſire of a Peace. He denies that he treated with Mr. *Meſnager* ſecretly, or without Authority, or that he aſſumed Regal Power, or adviſed a ſeparate Treaty; but believed there was a Paper ſtiled, *The Anſwer of* France, *to the Preliminary Demands of* Great Britain; to which was ſubjoined, *A Declaration of the Queen's Acceptance of thoſe Preliminary Articles in caſe of a General Peace*; which Declaration was ſigned by the Secretaries of State: But whether this could be called a ſeparate Treaty, he ſubmitted to their Lordſhips; and believes, however, that the Allies had early Notice of theſe Propoſals; and denies that the Intereſts of *Britain* were given up to *France*, or the Duke of *Anjou* admitted King of *Spain*, by that or any other Treaty; or that he ever endeavoured to diſſolve any Treaties her Majeſty was engaged in.

3. He denies he adviſed the preparing general Preliminaries to be ſigned by Mr. *Meſnager*, to diſguiſe the carrying on any private Negotiation; but believes ſome preliminary Articles, which were ſigned by *Meſnager*, were received by Her Majeſty, and communicated to the Allies, as the Grounds on which they might treat of a general Peace; but why the adviſing the receiving them ſhould be ſtiled impious, he could not conceive; and if any Treaty was ſigned by the Secretaries of State on the Part of *England*, and by *Meſnager* on the Part of *France*, he did not adviſe the concealing it from the Allies,

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lies, the Council, or the Parliament; nor did he adviſe the offering the ſaid Preliminaries to the Allies as a Foundation for a general Peace, or adviſe the Inſtructions given to the Earl of *Stafford*, but believes they were well warranted by the Truth of the Facts.

4. He admits there was ſuch a Declaration made by the Privy Council to the *Dutch* Miniſter as is mentioned in this Article; but ſays it was agreable to Truth, and he could not ſee wherein the Articles ſigned by *Meſnager* and the Secretaries were inconſiſtent with it; or how Her Majeſty was diſhonoured, or Her Allies abuſed thereby.

5. He believes the Inſtructions given to the Biſhop of *Briſtol* and the Earl of *Strafford* were as ſet forth in this Article, and that when they were inſtructed to inſiſt that *Spain* and the *Weſt-Indies* ſhould not be allotted to the Houſe of *Bourbon*, no Treaty had been made whereby it was ſtipulated that *Spain* or the *Weſt-Indies* ſhould remain to the Houſe of *Bourbon*; for her Majeſty had then Grounds to believe, that King *Philip* would be induced to quit *Spain* and the *Weſt-Indies*; and denies he was ever privy to any ſecret Treaties between *Great Britain* and *France*, whereby any Reproach could be brought on the Crown, or any Treaties were violated.

6. He denies he knew of any Negotiation relating to the Peace, which was carried on without communicating the ſame to the Allies; or that he had concerted any Terms prejudicial to her Majeſty, or her Allies.

7. Though he did not adviſe it, he ſaw no Reaſon why *Spain* and the *Weſt-Indies* might not be left to the preſent Poſſeſſor, rather than a War be continued, which was ſo burthenſome to the People, and ſo impracticable upon the Foot it was carried on.

8. That the Piety of Her Majeſty was ſuch that ſhe would not hazard the Blood of Her Subjects, without the greateſt Neceſſity, when ſhe had ſo near a Proſpect of Peace; and ſhe might thereupon ſend Orders to the Duke of *Ormonde*, not to engage in any Siege or Battel; which ſhe was as much at Liberty to do, as the Deputies of the States, who often refuſed to engage in Siege or Battel, on ſuch Motives as they thought reaſonable; though the Generals of the Allies, and their own Generals in particular, were of Opinion, they had a viſible Advantage. However, he denies he adviſed the ſending thoſe Orders to the Duke of *Ormonde*, or the Orders to the Biſhop of *Briſtol*, mentioned in this Article: Nor was he conſcious he had given any Councils, by which the Progreſs of the victorious Arms of the Confederates were ſtopped, or that tended to deſtroy the Confidence between Her Majeſty and Her Allies.

9. To the Ninth, he ſays, The Allies ſeparated their Forces from the Duke of *Ormonde*, and left him in his Camp; the Duke and the *Britiſh* Forces did not march away from them: And that the Generals of the Auxilliaries refuſed to continue with the Duke, or obey his Orders; and it might proceed from the Diſobedience of thoſe Troops, that Her Majeſty did not think fit immediately to pay their Arrears: And, he admits, ſome of the Troops of the Allies were defeated at *Denain*; and that the Towns of *Queſnoy*, *Bouchain*, and *Doway*, were afterwards retaken by the *French*.

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10. He admits there was a Suſpenſion of Arms for four Months, agreed on the 12th of *Auguſt*, 1712; which was the Continuance of a former Ceſſation, into which Her Majeſty invited the Allies; and, it was uſual for Princes at War, to deſire ſuch a Ceſſation of Arms, during a Negotiation of Peace; but he did not adviſe it.

11. He denies he ever adhered to the *French* King, or adviſed him in what Manner *Tournay* might be gained from the States-General: On the contrary, it was by Her Majeſty's Interpoſition, that *Tournay* was left to the *Dutch*: However, it was not High Treaſon for a Privy Councillor to adviſe the delivering up of a Town.

12. He denies he ever adhered to the Duke of *Anjou*, or adviſed the yielding *Spain*, or the *Weſt-Indies* to him: However, that was not High-Treaſon, if he had.

13. He ſays, He does not know of any Conceſſions made by the Miniſters of *Great Britain*, to promote the Intereſt of *France*, or to enable her to impoſe Terms of Peace on the Allies. He denies he entered into any Meaſures with *France*, deſtructive to the Commerce of *Great Britain*: And believed, when it was conſidered, what Advantages were like to accrue to the Commons of *Great Britain* by the *Aſſiento* Contract, the Liberty of Trading to the *Spaniſh Weſt-Indies*, the Ceſſion of *Accadia*, *Hudſon's-Bay*, *St. Chriſtopher's*, *Newfoundland*, the Demolition of *Dunkirk*, and the Ceſſion of *Gibraltar* and *Port-Mahon*; it would not be thought the Commerce of *Great Britain* had been neglected in the late Treaty of Peace: And though he did not adviſe the 9th Article of the Treaty of Commerce; yet, he obſerved, that nothing was poſitively ſtipulated in that Article, but the whole was left to the Determination of the *Britiſh* Parliament: Nor did he adviſe the *French* ſhould have the Liberty of drying their Fiſh in *Newfoundland*, or the Ceſſion of *Cape Breton* to *France*; nor does he know that *Cape Breton* was ever Part of the Territories of *Great Britain*: And he could not but obſerve, with great Satisfaction, the flouriſhing Condition of the Trade and Navigation of theſe Kingdoms, by Means of the late Peace; the great Increaſe of Shipping, and the Exportation of the *Britiſh* Manufactures, the Fiſh, and other Produce of this Kingdom: Whereby the Cuſtoms had been greatly advanced near three Millions of Gold and Silver lately coined; and the *Exchange* been in Favour of *England*, in all Parts of *Europe*.

14. He denies he adviſed the allotting of *Sicily* to the Duke of *Savoy*; but did not diſcern, how the diſpoſing of that Kingdom to him could be thought unjuſt to his Imperial Majeſty, or a Breach of the Grand Alliance.

15. He ſays, He was always of Opinion, that the Word of the Sovereign was Sacred: And that all Communications from the Throne to the Parliament, ought to be true:

But

1717. 3 Geo. I.

But that Her Majeſty's Declaration, *That the States-General had expreſſed a Confidence in Her*, was ſtrictly true, at the Time it was made: And whoever conſidered, what had been done by Her Majeſty for the Service of all Her Allies in the enſuing Treaty, muſt confeſs, ſhe had done her utmoſt to procure for the Allies, all that they could reaſonably demand, agreeably to her Speech and Meſſage: Nor could any one, who conſidered the Efforts ſhe had made in *Spain* for ſo many Years, entertain a Doubt, but ſhe had done her utmoſt for the Recovery of it from the Duke of *Anjou:* Nor did he ſee, how Her Majeſty could be charged with uttering a Falſity, when ſhe took Notice of the groundleſs Reports, that were ſpread of a ſeparate Peace, when there never was the leaſt Foundation for ſuch a Report: Only ſome few Points were adjuſted, relating to the Intereſts of Her own Kingdoms; and even thoſe were to have no Effect, but on the Concluſion of a General Peace; and theſe were, before the Concluſion of the Peace, communicated to the Allies: That King *Philip*'s Renunciation of the Crown of *France*, was not a mere Speculation; but of ſuch a Nature, as would execute itſelf, and keep the Crowns of *France* and *Spain* divided more effectually than ever; a Title to the Crown of *France* being thereby given to the Duke of *Orleans*, and the reſt of the Princes of the Houſe of *Bourbon*; who could not be preſumed to want Will, or Power, to take Poſſeſſion of the Crown of *France*, when the King of *Spain* would be at ſuch a Diſtance, and had renounced it.

16. He obſerved, that it was the undoubted Right of the Sovereign to create Peers: Nor were the Warrants for ſuch Patents ever communicated to the Privy-Council, or the Treaſury; and therefore he could not, as a Privy-Counſellor or Treaſurer, have any Knowledge of them: But had the Queen acquainted him with her Intentions, he might have approved the Choice, without any Breach of his Duty, they being all Perſons of Honour and diſtinguiſhed Merit; and the Peerage was not greatly increaſed by it, conſidering ſome of them would have been Peers by Deſcent, and many Titles of Honour were lately extinct; and, he believes, many Inſtances might be given, where former Princes had exerciſed this Prerogative, in as extenſive a Manner, particularly *Hen.* VIII. *James* I. and his late Majeſty King *William.*

Anſwer to the additional Articles.

Then the Earl proceeded to anſwer the additional Articles.

1. To the firſt, he anſwered, he was againſt the Expedition to *Canada:* But he believed, thoſe of Her Majeſty's Council, who promoted that Enterprize, acted ſincerely for the publick Good; and that the ill Succeſs of it was to be aſcribed to contrary Winds, and other unforeſeen Accidents: Nor did he believe the common Enemy received any Advantage by detaching thoſe Forces from *Flanders*, becauſe the General had Orders to ſupply their Places with other Troops, if he judged it neceſſary. That he was ſo far from adviſing the Payment of the 28,000 *l.* mentioned in this Article, that he put a Stop to it, till he received Her Majeſty's Orders to pay it: And though this Matter had been examined by the laſt, and the preſent Houſe of Commons, he had not heard of any Fraud that had been made out in that Affair; and if he prevented its being brought before the Parliament, it was becauſe he could not diſcover there was any Proof of a Fraud. That he had never exerciſed any arbitrary Power or Influence, either in the Privy Council, or the Great Council of the Nation; or deſigned to prevent Juſtice being done to the Queen or Nation.

1717. 3 Geo. I.

2. He acknowledges, Her Majeſty did ſign a Warrant for the Payment of 13,000 *l.* ariſing from the Sale of Tin; which was the Queen's proper Money, and not appropriated to the Uſe of the War; and the Tallies and Orders for it were ſtruck in Mr. *Drummond*'s Name: And, it was recited in the ſaid Orders, That Her Majeſty gave the ſaid Sum of 13,000 *l.* to the Earl, in Conſideration of his Services; and mentioned the Attempt made on his Life by *Guiſcard:* That the ſaid Grant, according to the Diſcount of thoſe Tallies at that Time, amounted to 10,000 *l.* for which he acknowledges Her Majeſty's Bounty; but obſerves, that much larger Grants had been made to other Miniſters of State, when the Neceſſities of the Crown have been equally preſſing: And ſays, That in this, or in any other Part of his Adminiſtration, he had not been guilty of any Corruption, or Breach of Truſt; but had managed the publick Treaſure in the moſt frugal Manner: That he never made any Advantage by the Diſpoſal of Places: Nor did he, in or out of Place, receive any Penſion from the Crown; and, at length, left the Service with clean, and almoſt empty Hands: So that notwithſtanding the Queen's Bounty, he could with great Truth affirm, his private Fortune had received a very inconſiderable Addition, by the Employments he poſſeſſed.

3. He acknowledges, That ſeveral Payments were made to Mr. *Prior*, amounting in the whole to 12,360 *l.* by Her Majeſty's Direction; and he does not know of any Law that limits a certain Allowance to Ambaſſadors: That other Ambaſſadors and Plenipotentiaries, have been allowed 1,500 *l.* for their Equipage, 100 *l.* a Week for their ordinary Entertainment, and 1,600 *l.* for Extraordinaries, beſides further Sums for ſpecial Services; and, if Mr. *Prior* had been paid on that Foot, he would have been entitled to much larger Sums. He acknowleges alſo, that 5,560 *l.* was paid to Mr. *Harley*, who went twice to the Court of *Hanover*; but denies that either of them were his Creatures, or that he ever entered into any Combination with them, or any other Perſons, to defraud Her Majeſty, under Colour of ſuch Employments.

4. He denies his having a Correſpondence with the late Queen *Mary*, or being in the Intereſt of the Pretender; but admits, that King *James* having granted ſeveral annual Sums, amounting to 47,000 *l*, *per Annum*, out of the Hereditary *Exciſe* and *Poſt-Office*, to the Uſe of his ſaid Queen, and the late Act of Parliament containing a Saving of all People's

Rights,

1717. 3 Geo. I.

Rights, the ſaid late Queen did employ the Abbot *Gualtier* to receive, for her Uſe, all Sums of Money due to her at *Lady-Day* 1713; and Her Majeſty Queen *Anne* thereupon ſigned a Warrant to the Earl, then Treaſurer, of the Purport in this Article mentioned; and the Money was thereupon paid, the Queen's Counſel at Law allowing the Demand to be legal; and it was paid out of the 500,000 *l.* raiſed for the Payment of her Majeſty's other Debts: That the Queen did alſo order 1,000 *l.* to be paid to the ſaid *Gualtier*, who acted as a publick Miniſter from the *French* King, and had been inſtrumental in releaſing the *French* Proteſtants on board the Gallies.

5. He admits that *Patrick Lawleſs* was ordered 1,000 *l.* by the Queen, and that he expected a much larger Sum, having negotiated the ſending the *Britiſh* Merchandizes to the *Spaniſh Weſt-Indies*; and that he was not known to be a Native of *Ireland* till long after his Arrival: That he (the Earl) never adviſed the receiving him under the feigned Name of *Don Carlo Moro*, or had any Knowledge of his being a Miniſter of the Pretender's, or that he was ſent to promote his Intereſts; nor had he ever countenanced any Emiſſary of the Pretender's, or his Adherents, to the endangering the Proteſtant Succeſſion in the Houſe of *Hanover*; and was perſuaded his Conduct was ſo well known in that Reſpect, as to need no further Juſtification: But if it ſhould, he was able to produce ſuch Proofs of it, as were the beſt Authority in the World, for his Vindication.

6. To the Sixth Additional Article, he ſays, Her Majeſty being informed, that the People of *Catalonia* were inclined to caſt off the *French* Yoke, and return to the Obedience of the Houſe of *Auſtria*; ſhe ſent Mr. *Crowe* to aſſure them of Her Majeſty's utmoſt Endeavours, to procure the Re-eſtabliſhment of thoſe Rights, they formerly enjoyed, under the Houſe of *Auſtria*: And that Manifeſto's of the like Tenor, were alſo publiſhed by the Earl of *Peterborough*, and Sir *Cloudeſly Shovel*: And the *Catalans* did afterwards acknowledge King *Charles* III. and join their Arms with Her Majeſty's and Her Allies, againſt the preſent King of *Spain*; but what Motives induced them to it, he did not know. He admits alſo, That the Arms of the Confederates, were, for ſome Time, attended with great Succeſs in *Spain*; their Troops having twice entered into the Capital City of that Kingdom: And that the *Catalans* were under the higheſt Obligations to Her Majeſty, for aſſiſting them with thoſe numerous Forces and Supplies, to make theſe Conqueſts: But the Advantages of theſe Succeſſes being loſt, and the other Allies withdrawing their Troops from *Spain*, Her Majeſty found the Burthen of that War too heavy for Her Subjects alone; and therefore, for the Good of Her People, thought fit to enter upon a Treaty of Peace: But denies he ever conſpired to ſubject the *Spaniſh* Monarchy to the Houſe of *Bourbon*; or the Deſtruction of the *Catalans*; or adviſed the acknowledging the Duke of *Anjou* King of *Spain*, before a Treaty of Peace was ſet on Foot in Form: On the contrary, he uſed his beſt Endeavours to obtain the Liberties of the *Catalans*: And if from the Meaſures taken by the *Catalans*, or his Imperial Majeſty, Her Majeſty's Endeavours had not their full Effect, it could not be imputed to any Neglect in Her Majeſty, or Want of Duty in the Earl: He denies that his Imperial Majeſty was neceſſitated, by any Practices of his, to enter into the Convention for the Evacuation of *Catalonia*; but that Her Majeſty was prevailed on by the Importunity of the Emperor, to be one of the Guarantees thereof: But knows not why his Imperial Majeſty, whom it moſt concerned, omitted in that Convention, to make expreſs and poſitive Stipulations for the Liberties of the *Catalans*. As to Her Majeſty, Her beſt Offices were employed, and repeated Inſtances made by Her Miniſters, in the moſt pathetick Manner, to obtain for them the Privileges they deſired: And that Her Majeſty did actually obtain for them a perpetual Amneſty and Oblivion, a full Poſſeſſion of their Eſtates and Honours, and a further Grant of all the Privileges, which the Natives of both *Caſtiles* (the moſt favoured of all the *Spaniards*) enjoyed; whereby the *Catalans* were let into the Trade of the *Weſt-Indies*, which they were excluded from before: And the Queen might have obtained ſtill larger Privileges for them, if they had waited the Event of Her Interpoſitions, and not determined to carry on the War by themſelves againſt King *Philip*; whereby they loſt the Advantages ſhe had ſtipulated for them: Concluding, that he cannot juſtly be charged with any Conſequences on the *Catalans* Refuſal to comply with the King of *Spain*, and acquieſce in the Terms Her Majeſty had obtained for them. And ſays, He is not guilty of all, or any of the Matters contained in the ſaid Articles.

1717. 3 Geo. I.

Obſervations of the Earl's on the whole.

The Earl having anſwered the ſeveral Articles, obſerved, That every Thing he was charged with was done in the Reign of a Princeſs, who having a perfect Knowledge of the State of Affairs at that Time, could have been the only competent Judge, Whether ſhe was fraudulently dealt with, led into ill Meaſures which ſhe did not direct or approve; or made an Inſtrument of ſacrificing Her Kingdoms to the Enemy. It was with great Grief, he obſerved ſuch Things ſuggeſted, as ſeemed to reflect on the Character of that excellent Queen: But he aſſures their Lordſhips, that every Thing relating to the Peace, was communicated to Her late Majeſty, and maturely conſidered by Her, before any Thing was determined thereupon: Nor was any Step taken, but in Purſuance of ſuch Determination.

He ſaid, That the Queen had nothing more at Heart, than to procure Her People the Bleſſing of Peace; and, when ſhe had obtained it, ſhe had this Satisfaction, that ſhe had taken the moſt proper Meaſures to juſtify her Conduct, both to Her Allies, and Her own Subjects: That upon a Review of Her Actions it would appear, and had, in Part, appeared by this Anſwer, That as Her Majeſty entered further into the War, than ſhe was obliged by any Treaties in Being at Her Acceſſion, ſo ſhe contributed more Men and Money towards the carrying it on afterwards,

1717. 3 Geo. I.

than ſhe was engaged to provide by any ſubſequent Treaties: That Her earneſt Deſires of Peace being twice fruſtrated, when ſuch Conditions might have been obtained, as would have anſwered all the Ends for which the War was declared; and our Succeſſes and Victories produced only an annual Increaſe of the Charge to *England*, without any further Aſſiſtance from the Allies; and theſe Kingdoms were exhauſted to ſuch a Degree (notwithſtanding the great Advantages obtained by Her Arms,) that ſhe was not able to continue the War upon the Foot it then ſtood a Year longer: And Her Allies refuſed to continue it upon thoſe equal Conditions, they were obliged to by their Treaties; ſhe was conſtrained, in Compaſſion to Her People, to hearken to the Overtures of Peace made Her by *France*, without relying longer on the vain Hopes of gaining more advantageous Terms, by protracting the War a Year longer. She had carried it on ſome Time under that Proſpect, without reaping the Benefits propoſed; and thereby, perhaps, raiſed the Glory of Her Arms; but ſhe could not think this a ſufficient Recompence, for the increaſing Miſeries of Her People; and therefore reſolved to lay hold on the Opportunity that was offered Her, of ending the War, by a Safe and Honourable Peace: And thoſe who were then employed in Her Majeſty's Councils, thought themſelves obliged to ſecond Her good Intentions.

And as the Terms of Peace were advantageous to *Great Britain*, it was approved by both Houſes of Parliament: Solemn Thanks were rendered to God for it here, and in the *United Provinces*; and Her Majeſty received, on this Occaſion, the hearty Congratulations of Her People, from all Parts of her Dominions.

This being a true Repreſentation of the Caſe, the Earl does not ſee, how he, or any others in Her Majeſty's Service, can juſtly be charged with betraying the Intereſts of their Country, or the Allies, by negotiating that Peace, ſo acceptable and advantageous to theſe Kingdoms: And, if the Peace itſelf be not condemned, and it be not charged as a Crime that he adviſed Her Majeſty to conclude that Peace, he conceives it an extraordinary Hardſhip, that rough Draughts and Eſſays towards a Peace, leading to an End that was juſt and profitable, ſhould be brought to form ſo many diſtinct Heads of Accuſation againſt him: For, ſuppoſing any improper Steps had been taken, which he does not admit; yet, if Things were at laſt conducted to a right Iſſue, and ended in an Honourable and Advantageous Peace, there can be no juſt Ground to find Fault with the Meaſures uſed to compaſs it, becauſe they ſeemed before the Accompliſhment to have a different Tendency; eſpecially if it were conſidered, that ſcarce any Peace had been made by a Confederacy, where leſs Reaſon had been given to complain among the ſeveral Parties; and therefore he hoped that no Steps taken for obtaining a Peace, approved by former Parliaments, would be accounted Criminal by any ſucceeding Parliament; unleſs it appeared that thoſe Steps were taken contrary to the Queen's Orders, or upon corrupt Views of private Advantage.

1717. 3 Geo. I.

And as a further Proof that the Queen's Miniſters acted with upright Intentions, and were not conſcious of any Failure in their Duty, the Earl obſerves, they never attempted to cover their Actions from publick Cenſure by any Pardon or Indemnity.

That he never ſought or deſired any of the great Employments he held, but came into them by Her Majeſty's ſpecial Command, and had ſerved Her with the utmoſt Zeal and Faithfulneſs; and as he continued in thoſe Stations many Years, it was with Wonder and Pleaſure he obſerved Her Majeſty's whole Thoughts and Time divided between her Duty to God and her Love to her People, whoſe Proſperity ſhe preferred to her own Eaſe, and often hazarded her Health and Life to procure it: That he found it the moſt effectual Way to recommend himſelf to Her good Opinion, to act upon the ſame Principles of Juſtice and Love to his Country that ſhe did; and as ſhe abhorred the Thoughts of every Thing that might be burthenſome or injurious to Her People, ſo ſhe expreſſed herſelf with the greateſt Satisfaction and Delight, when ſhe reflected on the Advantages ſhe had obtained for Her own Subjects, and the Quiet and Repoſe ſhe had gained for *Europe*, by that Honourable Peace, for which, as the preſent Age bleſſed Her, future Generations would adore Her Memory.

The Commons replied to the Earl's Anſwer, and averred their Charge to be true: And the Earl being brought to his Trial before the Houſe of Peers in *Weſtminſter-hall*, on the 24th of *June*, 1717, the Managers proceeded to open the Charge: But before they had gone through the firſt Article, the Lord *Harcourt* moved the Peers to adjourn to their Houſe above, and they adjourned thither accordingly; where the Lord *Harcourt* propoſed the following Queſtion, *(viz.)*

The Trial begins.

That the Commons be not admitted to proceed, in order to make good the Articles againſt Robert *Earl of* Oxford *and Earl* Mortimer, *for High Crimes and Miſdemeanors, till Judgment be firſt given on the Articles of High-Treaſon.*

A Difference between the two Houſes.

Which being reſolved in the Affirmative, the Lords returned to *Weſtminſter-hall*, and the Lord High Steward acquainted the Commons with the ſaid Reſolution: Whereupon Mr. *Thompſon*, one of the Managers, ſaid, The Commons conceived it to be their undoubted Right to proceed in their own Method; and that this Reſolution might be of ſuch fatal Conſequence to the Rights and Privileges of the Commons, that they could proceed no further without reſorting to the Houſe for their Direction. Then the Houſe of Peers adjourned, and a Conference was held afterwards between the two Houſes on this Subject.

But the Lords perſiſting in their Reſolution, Not to ſuffer the Commons to proceed on the Articles of High Crimes and Miſdemeanors till Judgment was given on the Articles of High-Treaſon; and the Commons inſiſting, that it was their undoubted Right to impeach a Peer either for High-Treaſon, or for High Crimes and Miſdemeanors, or if they ſaw fit to mix the one and the other in the ſame Accuſation; there followed ſuch a Breach between the two Houſes, that, the Lords ordering

1717. 3 Geo. I.

ing the Earl to be brought before them again on *Monday* the 1st of *July*, and giving Notice to the Commons that they intended to proceed further in the Trial that Day, the Commons refuſed to attend: Whereupon: the Lords adjourned from *Weſtminſter-Hall* to their Houſe above, and the Queſtion being put, *That* Robert *Earl of* Oxford *and Earl* Mortimer *be acquitted of the Articles of Impeachment exhibited againſt him by the Houſe of Commons, for High-Treaſon and other High Crimes and Miſdemeanors, and that the ſaid Impeachment be diſmiſſed*; it was unanimouſly reſolved in the Affirmative.

The Commons refuſe to appear at the Trial.

1717. 3 Geo. I.

Then the Lords went again to the Court in *Weſtminſter-Hall*; and the ſame Queſtion being put and reſolved in the ſame Manner there, the Earl was brought to the Bar, and the Lord High Steward declared to him, that he was ACQUITTED, and that the ſaid Impeachment was diſmiſſed: After which the Lord High Steward broke his Staff, and the Earl was diſcharged.

The Earl acquitted.

1718. 5 Geo. I.

The Trial of STEDE BONNET, and Thirty-three more of his Crew, for *Piracy*, before a Court of *Admiralty*, at *Charles-Town* in *South-Carolina*, the 30th of *October*, 1718. 5 Geo. I.

1718. 5 Geo. I.

Bonnet's Trial.

NICHOLAS TROTT, Eſq; Judge of the Court of Admiralty, and Chief Juſtice of *South Carolina*, at the opening the Commiſſion for the Trial of theſe Pirates, obſerved, That the Inhabitants of that Province had lately been great Sufferers by Pirates, who had the Aſſurance to lie at their Bar, in Sight of *Charles Town*, where they took and plundered ſeveral of their Ships, inward and outward-bound; which at length ſo provoked the Government of *Carolina*, that they fitted out a Force, under the Command of Colonel *Rhet*, who fought the Pirates, and brought them in Priſoners; and they were now indicted for their numerous Depredations at Sea; but ſeveral of their People had loſt their Lives in thus bravely diſcharging their Duty to their King and Country, which he hoped would prove a ſtrong Inducement to the Jury to do Juſtice on theſe Wretches, who were Enemies to all Mankind.

The Pirates taken by the Townſmen of Charles-Town.

Two Indictments being found againſt the Priſoners, they were tried on the 30th of *October*, 1718, except their Commander *Stede Bonnet*, who had made his Eſcape out of Priſon, and was not then retaken.

The Indictment.

The firſt Indictment charged, That *Edward Robinſon*, *Robert Tucker*, *William Scot*, and the reſt of this piratical Crew, on the 2d of *Auguſt*, in the 5th Year of the King, upon the High-Sea, near *Cape James*, alias *Cape Inlopen*, being about two Miles diſtant from the Coaſt, in the Latitude of Thirty-nine or thereabouts, did piratically take, board, and break up a certain Merchant Sloop, called *The Francis*, *Peter Manwaring* Commander; carrying away the ſaid Sloop and Cargoe, which was of a conſiderable Value; againſt the King's Peace, *&c.*

The Evidence.

Ignatius Pell, Boatſwain of *The Revenge*, *Bonnet*'s Sloop, teſtified, That he and the reſt of the Priſoners, came, with the Pirates *Thatch* and *Bonnet*, from the *Bay of Honduras*, and took ſeveral Veſſels in their Way; after which they lay off of *Charles-Town*, where they took five Veſſels more: That they ſailed then to the Capes of *Virginia*, and afterwards to *Cape James*, where they took the Sloop commanded by Captain *Manwaring*, as charged in the Indictment.

Captain *Thomas Read* teſtified, That he was Priſoner on Board of *Bonnet* when he took Captain *Manwaring*'s Sloop; and that *Bonnet* demanding of *Manwaring*, from whence he came; he anſwered, he came from *Antigoa*, and was bound for *Boſton*; and the next Morning the Pirates took ſeveral Hogſheads of Moloſſes and Rum, and other Goods, out of *Manwaring*'s Sloop, and put them on Board his own, and he ſaw the Crew ſhare the Goods amongſt them.

Captain *Peter Manwaring* alſo gave Evidence of his being taken by *Bonnet* and his Crew; and depoſed, that they demanded of him what he had on Board; and he anſwered, he had Moloſſes, Sugar, and Rum; and thereupon they took out his Moloſſes and Rum, and put them on Board the Pirate.

James Keiling, *Manwaring*'s Mate, confirmed the Evidence of the former Witneſſes, and added, that the Pirates carried their Sloop to *Cape Fear*.

Convicted on the firſt Indictment.

The Fact being abundantly proved, and the Priſoners having nothing material to offer in their Defence, they were all found GUILTY on this Indictment, except four, who appeared to be under a Force.

A ſecond Indictment.

They were then tried upon a ſecond Indictment, which charged, That the ſaid *Edward Robinſon*, *Robert Tucker*, &c. on the 31ſt of *Auguſt*, in the 5th Year of King *George*, on the High-Sea, at a certain Place called *Cape Fear*, in the Latitude of Thirty-four, did feloniouſly and piratically take, break, and enter a certain Merchant Sloop, called *The Fortune*, *Thomas Read* Commander, carrying away both the Veſſel and Cargoe; againſt the King's Peace, *&c.*

Convicted on the ſecond Indictment.

The Fact being proved beyond all Doubt by the ſame Witneſſes, and the Priſoners offering nothing material in their Defence, they were convicted alſo upon this Indictment, (except the four that were under a Force) and Sentence of Death was paſſed on them, on the 5th of *November* following; in Purſuance whereof they were executed.

Condemned.

Bonnet himſelf alſo being retaken, was brought to his Trial on the 10th of *November*, and convicted on the ſame Evidence, and afterwards confeſſed the Facts; whereupon Sentence of Death was pronounced on him, and he was executed at the *White Point*, near *Charles-Town*, on the 10th of *December*.

Bonnet *convicted, and executed with the reſt.*

Proceedings

1719. 5 Geo. I.

Anneſley *and* Sherlock.

Proceedings of the *Iriſh* Houſe of Lords againſt the Lord Chief Baron GILBERT, and other Barons of the *Exchequer* there (in the Caſe of *Anneſley* and *Sherlock*, which occaſioned the Reſtraining the Juriſdiction of that Houſe over the Inferior Courts,) 28 *July*, 1719. 5 *Geo.* I.

1719. 5 Geo. I.

Reſolutions of the Houſe of Lords in Ireland.

ON the Motion of *Edward* Earl of *Meath*, and *Cecilia* his Counteſs, on the 11th of *February*, 1703, it was Reſolved by the *Iriſh* Houſe of Lords, *nemine contradicente*, That by the Laws and Statutes of that Kingdom Her Majeſty had an undoubted Juriſdiction and Prerogative of judging, in that Her High Court of Parliament, of all Appeals and Cauſes within that Realm.

That the Determinations of that Houſe were final, and could not be reverſed or ſet aſide by any other Court whatever.

That if any Subject, or Reſiant of that Kingdom, ſhould preſume to move any Cauſe, determined in that High Court, to any other Court, he ſhould be deemed a Betrayer of Her Majeſty's Prerogative, and of the undoubted Rights and Privileges of that Houſe, and of the Subjects of that Kingdom.

And that if any Subject, or Reſiant of that Kingdom, ſhould preſume to put in Execution the Orders of any other Court, contrary to the final Judgment of that Houſe, ſuch Perſon ſhould be deemed a Betrayer of Her Majeſty's Prerogative and Juriſdiction, and the undoubted Rights and Privileges of that Houſe, and of the Subjects of that Kingdom.

In *September* 1717, a Cauſe between *Sherlock* and *Anneſley* coming by Way of Appeal before the *Iriſh* Houſe of Lords, their Lordſhips Ordered, on the 3d of *October*, the High-Sheriff of the County of *Kildare* to put the Appellant, *Heſter Sherlock*, into the Poſſeſſion of certain Lands in that County; whereupon Mr. *Anneſley* appealed to the Houſe of Lords of *Great Britain:* However, the ſaid *Heſter Sherlock* was put into the Poſſeſſion of the ſaid Lands, by vertue of the ſaid Order of the *Iriſh* Houſe of Lords, on the 16th of *October*, 1717; and remained in Poſſeſſion of them near two Years: But the *Britiſh* Houſe of Peers making a Decree in the mean time in favour of *Anneſley*, ſent Orders to the Lord Chief Baron *Gilbert*, and the reſt of the Barons of the Court of *Exchequer* there, to replace *Anneſley* in the Poſſeſſion of thoſe Lands of which he had been diſpoſſeſſed by vertue of the Decree of the *Iriſh* Houſe of Lords; and the Court of *Exchequer* iſſued their Proceſs accordingly; but the High Sheriff refuſed to obey it: Whereupon ſeveral Fines were ſet upon the Sheriff by the Barons; and he appealed to the *Iriſh* Houſe of Lords, who came to the following Reſolutions, *viz.*

Further Reſolutions of the Iriſh *Houſe of Lord*;

That the Caſe of *Sherlock* and *Anneſley*, as it lay before the Barons of the *Exchequer*, being not only Matter of Law, but State, ought to have been laid before the King, or the chief Governors of this Kingdom, it ſo nearly concerning His Majeſty's Prerogative, and the Intereſt of the whole Kingdom.

That *Jeffrey Gilbert* Eſq; Lord Chief Baron of the *Exchequer*, *John Pocklington* Eſq; and Sir *John St. Leger*, Barons of the ſaid Court, in their Proceedings in the Cauſe between *Sherlock* and *Anneſley*, and againſt *Alexander Burrowes*, Eſq; late Sheriff of the County of *Kildare*, have acted contrary to Law, and to the eſtabliſhed Practice of the King's Courts.

Againſt the Barons of the Exchequer, *for executing the Decrees of the* Engliſh *Houſe of Peers.*

That the ſaid Lord Chief Baron and Barons, having taken upon them to put in Execution a pretended Order from another Court (the *Engliſh* Houſe of Peers) contrary to the final Judgment of this High Court of Parliament, in the Cauſe between *Sherlock* and *Anneſley*, are Betrayers of His Majeſty's Prerogative, and the undoubted antient Rights and Privileges of this Houſe, and of the Rights and Liberties of the Subjects of this Kingdom.

The Barons committed.

And it was Ordered, by the Lords Spiritual and Temporal, that the ſaid Lord Chief Baron and Barons ſhould be taken into the Cuſtody of the Black Rod of that Houſe; and they were taken into Cuſtody accordingly.

Theſe Proceedings of the *Iriſh* Houſe of Peers ſo incenſed the Houſe of Lords of *Great Britain*, that they ordered a Bill to be brought in, to diſable the Houſe of Peers of *Ireland* from reverſing or altering any Judgment given in any of the inferior Courts of that Kingdom; which Bill afterwards paſſed into an Act, and was intituled, *An Act for the better Security of the Dependency of the Kingdom of* Ireland *upon the Crown of* Great Britain, and is of the following Tenor, *viz.*

An Act for the Securing the Dependency of Ireland *on* England.

Whereas the Houſe of Lords of *Ireland* have of late, againſt Law, aſſumed to themſelves a Power and Juriſdiction to examine, correct, and amend the Judgments and Decrees of the Courts of Juſtice in that Kingdom; therefore, for the better ſecuring of the Dependency of *Ireland* upon the Crown of *Great Britain*, it is declared, That the ſaid Kingdom of *Ireland* hath been, is, and of Right ought to be ſubordinate unto, and dependant upon, the Imperial Crown of *Great Britain*, as being inſeparably united and annexed thereto; and that the King's Majeſty, by and with the Advice and Conſent of the Lords Spiritual and Temporal, and Commons of *Great Britain* in Parliament aſſembled, had, hath, and of Right ought to have, full Power and Authority to make Laws and Statutes of ſufficient Force and Validity to bind the Kingdom and People of *Ireland*.

The Power of the Iriſh *Houſe of Lords, in Caſes of Appeal, abrogated.*

And it was further declared and enacted, That the Houſe of Lords of *Ireland* have not, nor of Right ought to have, any Juriſdiction to judge, affirm, or reverſe, any Judgment, Sentence, or Decree, given or made in any Court within the ſaid Kingdom; and that all Proceedings before the ſaid Houſe of Lords, upon any ſuch Judgment, Sentence, or Decree, are, and are hereby declared to be, null and void, to all Intents and Purpoſes whatſoever.

The

1721. 8 Geo. I.

Reaſon *and* Tranter *their Trial.*

The Trial of HUGH REASON and ROBERT TRANTER, for *Murder*, at the *King's-Bench* Bar, on the 3d of *February*, 1721. *Hil.* 8 Geo. I.

1721. 8 Geo. I.

The Indictment.

THE Indictment charged, that *Hugh Reaſon* and *Robert Tranter*, on the 17th of *October* then laſt paſt, at the Pariſh of *Clement Danes*, in the County of *Middleſex*, felonioufly, and of their Malice afore-thought, made an Aſſault upon *Edward Lutterell* Eſq; and that the ſaid *Hugh Reaſon*, with a Piſtol charged with Powder and Ball did ſhoot the ſaid *Edward Lutterell*, giving him one mortal Wound under the Right Pap, of the Breadth of one Inch, and the Depth of nine Inches; of which Wound he languiſhed till Ten o'Clock in the Evening, and then died; and that the ſaid *Robert Tranter* was preſent, aiding and abetting the ſaid *Hugh Reaſon* to commit the ſaid Murder; againſt the King's Peace, *&c.*

The Caſe was thus: As Captain *Lutterell* was going from his Lodgings in *Surry-Street*, to take Water, he was arreſted for 10*l.* by the Priſoners *Reaſon* and *Tranter*; and he telling them that, if they would go home with him, he would pay the Money, they did ſo; and *Reaſon* went up with the Captain into his Dining-Room, while *Tranter* was ſent for the Attorney's Bill of Charges. In the mean Time Mr. *Lutterell* going up another Pair of Stairs, to fetch the Money, (as 'tis preſumed) and leaving *Reaſon* in the Dining-Room, came down Stairs again with a Brace of loaded Piſtols in his Breaſt; but, upon his Maid's Perſuaſion, laid them down on the Table, and ſaid, he deſigned no Hurt: However, *Tranter* returning again, there were high Words between the Deceaſed and the Bailiffs; and the Deceaſed threatened them, and ſtruck one of them with his Cane; whereupon *Tranter* ran the Deceaſed againſt the Wainſcot, and *Reaſon* ſtabbed him. They alſo got Poſſeſſion of his Piſtols, and ſhot him; and throwing him down upon the Floor, gave him nine or ten Wounds afterwards, with his own and *Reaſon*'s Sword; Whereupon a Cry of Murder was made, and People came in and apprehended the Bailiffs; one of whom was wounded in the Arms with a Brace of Balls, and they had ſome other ſlight Wounds about them.

Mrs *Lutterell* living ſome Hours after this Rencounter, declared before Mr. *Peters*, who adminiſtered the Sacrament to him, and others, as he lay a dying, that the Bailiffs took the Piſtols from his Table, and fired both of them: That the fat Man drew his Sword, and ran him through the Body, and then drew his *(Lutterell*'s) Sword, which he *(Lutterell)* broke in the Bailiff's Hand, and begged for Life: That he *(Lutterell)* neither fired a Piſtol, or made one Puſh: That they both ranhim through, though he offered to pay them the Money: But, he ſaid, they had given him abuſive Language, which induced him to ſtrike one of them; and upon that, they immediately ſeized him, tumbled him down, and ſtabbed him: That he begged them to ſpare his Life; but one of them ſaid, Damn him, draw his Sword, and ſtab him.

The Chief Juſtice's Directions to the Jury.

The Chief Juſtice, in ſumming up the Evidence, obſeved, That the Priſoners had been ſo civil on the Arreſt, as to carry Mr. *Lutterell* to his Lodging; a Circumſtance, he confeſſed, that made ſome Impreſſion on him: It was what Bailiffs were not bound to do; they were uſually rough, and not eaſy to be entreated, unleſs well paid for it: They were too favourable in truſting him in his own Lodging; and it was ſtill a greater Piece of Civility, the ſending *Tranter* for the Attorney's Bill, and ſtaying alone with him; Mr. *Lutterell* might have ſent his own Servant. This was extreme civil Uſage, and was not often done by Men of their Character: Nay, *Reaſon* ſuffers him to go up Stairs into another Room, when his Partner was gone: This ſhews exceſſive Favour to their Priſoner, which they could not in Strictneſs juſtify: And Mr. *Lutterell*'s bringing down a Brace of Piſtols, ſeemed to be an untoward Return for their Civility. Indeed, the Maid Servant depoſed, *That he ſaid, he had no Malice towards them, and would not hurt a Hair of their Heads; he only brought down the Piſtols that he might not be impoſed upon:* But he did not not know what he meant, when he was in Cuſtody of the Officers, and had been ſo civilly uſed, to bring down a Caſe of Piſtols, to prevent his being ill uſed. It ſeems as if he intended to affright the Officers, that they ſhould not carry him away. It was the Duty of the Bailiffs to carry him off, and he brought down the Piſtols to prevent that; and he owned that he gave one of the Bailiffs a Blow on the Head with his Stick; and the Bailiffs ſay, in their Juſtification, that the Aſſault began on his Side. It was was ſtrange that *Tranter*, immediately after he came back, ſhould run him againſt the Wainſcot, and *Reaſon* aſſault him with a Sword, without a Provocation: This Behaviour was not of a Piece with the other. He thought it appeared by the Evidence, beyond Contradiction, that the Piſtols were brought down with a Deſign to prevent his being carried off, and that he did give one of the Bailiffs a Blow with a ſtick. Upon the whole he thought it was plain that the Priſoners at the Bar did kill Mr. *Lutterell*; that when *Tranter* had him againſt the Wall, *Reaſon* ſtabbed him; and when he was lying upon the Floor, *Reaſon* ſtabbed him: And it appeared by another Evidence, that *Reaſon*, the fat Man, ſhot off a Piſtol; ſo that he made no doubt but the Priſoners at the Bar did give Mr. *Lutterell* thoſe Wounds of which he died: The Surgeons had depoſed, that there were eight or nine Wounds with a Sword, one of them mortal; and a Wound with a Bullet that was mortal.

Then the Queſtion was, Whether, upon this Evidence, the Defendants were guilty of Felony?

1721. 1 Geo. I.

Felony? and if guilty, then in what Degree, whether Murder or Manſlaughter?

Bailiffs were Miniſters of Juſtice, armed with the Authority of the Law; and thoſe who reſiſted a Bailiff in the Execution of his Office, reſiſted the Law; and in executing their Warrants, and doing what was neceſſary for that Purpoſe, for the obtaining their Priſoner, or for the Security of their own Perſons, if Death enſued, the Bailiffs having the Authority of the Law on their Side, it was not ſo much as Felony: And it was neceſſary it ſhould be ſo; for without it, all their Properties would be precarious.

Here is Mr. *Lutterell* under an Arreſt, fetches down his Piſtols to prevent his being carried off, and threatens the Bailiffs: He doubted his Threatening muſt have Reference that he threatened to diſcharge his Piſtols, or draw his Sword upon them; and he did not only threaten them, but gave one of them a Blow with his Cane; whereupon *Tranter* runs him up againſt the Wall, and *Reaſon* ſtabs him. Now, when Piſtols are brought down, Threatenings uſed, a Blow given, the Officers are not to ſtand ſtill till they are murdered: They could not tell what Mr. *Lutterell*'s Intention was; as he had made an Appearance of Reſiſtance, and had made an Aſſault, the Jury were to conſider, whether this was not a neceſſary Defence of the Officers to ſecure their Priſoner. The Maid ſaid, indeed, when the Piſtols were brought down, at her Perſuaſion, her Maſter laid them on the Table, which was an Indication that no ill Uſe was to be made of them; and it did not appear whether one or both of them were in Mr. *Luterell*'s Reach: But then it appeared *(I don't ſee where)* that notwithſtanding the running him againſt the Wall, he had, in ſome meaſure, reſcued himſelf from that Force; and there was ſtruggling and throwing down, which ſhewed that he was not ſo in the Power of the Bailiffs, that they could be ſecure of preſerving their Priſoner, or their own Lives: That it muſt be left to the Jury, whether they believed Mr. *Lutterell* had a Deſign to reſcue himſelf; and if they thought the Bailiffs had a juſt Provocation, and were apprehenſive of loſing their Priſoner, the Law allowed them to do what was neceſſary for their own Security and the Security of their Priſoner; but if they thought this was done out of Heat and Paſſion by the Bailiffs, when there was no juſt Cauſe to apprehend the Priſoner's being reſcued; then they were guilty of Felony. He confeſſed it looked barbarous, that when a Man was in his Blood upon the Ground, they ſhould follow their Blows, giving him more Wounds: This was carrying the Thing a great Way, and looked like Barbarity. But if Mr. *Lutterell* gave the firſt Provocation, whatever happened afterwards, if done for the Security of their own Lives, and of their Priſoner, would not make them guilty of Felony.

1721. 8 Geo. I.

It appeared, that Mr. *Lutterell* had given a Blow: Men of Honour were not to juſtify themſelves, by ſaying, ſaucy Language was given them; and thereby they would be their own Avengers: That to make it Murder in the Bailiffs, it muſt appear to be done maliciouſly, and without Provocation: That Blows had always been allowed to be Provocations; and, in this Caſe, it was accompanied with fetching down Piſtols, and threatening the Bailiffs what he would do: And, if ſo, the Bailiffs would not be guilty of Murder, but Manſlaughter: That they were to aſſert the Authority of the Bailiff; but then they muſt not incourage the Bailiffs, on a few angry Words, immediately to fall into a Paſſion, and take away the Life of a Man. It appeared that a Blow had been given under untoward Circumſtances, after the Bailiffs had been threatened with a Deſign to prevent his being carried off by them; and, if ſo, the moſt they could make it, would be Manſlaughter.

Then the Jury withdrew, and returning into Court an Hour afterwards, gave their Verdict that the Priſoners were guilty of *Manſlaughter:* Whereupon they prayed the Benefit of their Clergy, and were immediately burnt in the Hand, and diſcharged.

Convicted of Manſlaughter, and burnt in the Hand.

1721. 8 Geo. I.

The Trial of JOHN WOODBURNE Labourer, and ARUNDEL COKE Eſq; upon the Statute of *Maiming*, (made the 22d of *Car.* II.) at the Aſſizes held at *St. Edmundsbury* for the County of *Suffolk*, on the 13th of *March*, 1721. 8 *Geo.* I.

1721. 8 Geo. I.

Woodbourne and Coke their Trial.

The Indictment.

THE Indictment charged, that the Priſoners *Woodbourne* and *Coke*, on the firſt of *January*, in the eighth Year of the King, at *St. Edmunsbury* aforeſaid, on Purpoſe, and of Malice afore-thought, and by lying in wait, did feloniouſly make an Aſſault on *Edward Criſpe*, of the ſame Town, Gent. and that the ſaid *John Woodbourne*, with a Bill he then held in his Right Hand, did feloniouſly ſlit the Noſe of the ſaid *Edward Criſpe*, with an Intent to diſfigure him; and that the ſaid *Arundel Coke* was preſent at the ſame Time, aiding and abetting the ſaid *John Woodbourne* to commit the ſaid Felony; againſt the King's Peace, *&c.*

The Caſe.

The Caſe was this: *Criſpe* was poſſeſſed of an Eſtate of 300 *l. per Annum*, and having three Siſters, *Coke* the Priſoner married one of them; and, as Mr. *Criſpe* had no Children, *Coke*, in Right of his Wife, would have been entitled to a third Part of Mr. *Criſpe*'s real Eſtate on his Death: But being too impatient to wait for *Criſpe*'s Death in the natural Way, he tampered with ſeveral poor People to Murder *Criſpe*, for certain Rewards he offered them; and at length prevailed

1721. 8 Geo. I.

vailed on the Priſoner *Woodbourne*, after much Importunity, and a Promiſe of twenty Pounds Reward, to undertake it. This *Woodbourne* was a labouring Man, who had ten Children, and was very poor; and working ſometimes for *Coke*, had been relieved in his Neceſſity by him, and ſcarce knew how to deny any thing he put him upon.

Woodbourne no ſooner conſented to commit the Murder, but *Coke* invited *Criſpe* to Supper with him, on *New-Year's-Day*, 1721-2; and his Houſe being near the Church-Yard in *Bury*, he ordered *Woodbourne* to wait for him, in the Porch of a Houſe that ſtood in the Church-Yard, at eight in the Evening, and to ſtay there till he came to him. *Criſpe* on his Brother *Coke*'s Invitation, came to ſup with him, on *New-Year's-Day* in the Evening; as did alſo Mr. *Brown*, who had married *Coke*'s Siſter: *Coke* before Supper, propoſed to Mr. *Criſpe* the going to ſee one Mrs. *Fanny Monke*, who lived in the Church-Yard; but he did not ſeem inclined to go then: Whereupon *Coke* went out by himſelf; and meeting *Woodbourne* in the Church-Yard, who had prepared his Wood-Bill, in order to commit the Fact, *Coke* told him, that *Criſpe* was very merry, and he believed it would be late before he came out; but the later the better, and bid *Woodbourne* continue there till they came out----After Supper, about Ten o' Clock, *Coke* called *Criſpe* out of his Parlour; and they went together into the Church-Yard, it being very dark; and having taken two or three Turns before the Houſe of Mrs. *Monke*, already mentioned, *Coke* ſtood ſtill, and hallowed, and immediately *Woodburne* came up to them, and ſtruck *Criſpe* on the Face with his Bill; and giving him four or five Strokes more, he fell down in a Swoon, and *Coke* and *Woodburne* left him there for dead. *Coke* returned out of Breath to his own Houſe; and being asked by Mr. *Brown*, what was become of *Criſpe*, he ſaid, he believed he was gone Home: But they had not ſate above a quarter of an Hour, before *Criſpe*, who had recovered out of his Swoon, came in with almoſt all his Fleſh cut off his Face, and his Cheeks hanging down upon his Breaſt, to the great Surprize of the Family.

The Fact confeſſed.

Their Defence.

The Priſoners confeſſing the whole Charge, there is no Occaſion to repeat the Evidence. Their principal Defence was, That they did not intend to ſlit *Criſpe*'s Noſe, but to kill him; and if they had no *Intention* to ſlit his Noſe, it was not Felony by the aboveſaid Statute.

To which Mr. Serjeant *Selby*, who was Counſel for the King at this Trial, anſwered, That they could not intend to kill Mr. *Criſpe* with ſuch an Inſtrument as a Wood-bill, without intending to maim him firſt: And where there were two Intentions, and but one executed, there was no Pretence to ſay, that what was executed, was not intended.

The Chief Juſtice directs the Jury.

The Chief Juſtice, in ſumming up the Evidence, obſerved, That the Queſtion on this Indictment, was, Whether *John Woodburne*, did, on Purpoſe, and of Malice fore-thought, and by lying in wait, unlawfully ſlit the Noſe of *Edward Criſpe*, with an Intention to maim or disfigure him therein? And whether *Arundel Coke* was feloniouſly preſent at the Fact, aiding and abetting *Woodburne* in the Commiſſion and Perpetration of it?

1721. 8 Geo. I.

That *Woodburne*, in his Defence, did not deny the aſſaulting and wounding of Mr. *Criſpe*; but inſiſted, That what he had done, was by the Solicitation and Procurement of Mr. *Coke*; which was no Juſtification or Excuſe: For no Man was to obey the unlawful Commands, or hearken to the illegal Advices, of any other Perſon whatſoever. That the Defence *Coke* had made, which would ſerve alſo for *Woodburne*, was, That they intended to murder, and not to maim; and, if they did maim, it was with an Intention to kill, and not to disfigure.

And the Intent of the Party was to be diſcovered by the Facts themſelves; by the precedent, concomitant, and ſubſequent Circumſtances of the Facts; by the Manner of doing, and the like.

There were ſome Caſes, where an unlawful or felonious Intent to do one Act, might be carried over to another Act, done in Proſecution thereof; and ſuch other Act would be Felony, becauſe done in Proſecution of an unlawful or felonious Intent: As, where a Man ſhoots at a wild Fowl, wherein no Man had a Property, and by ſhooting happens unawares to kill a Man; this Homicide was not Felony, but only Miſadventure, or Chance-Medley; becauſe it was an Accident that happened in the doing of a lawful Act: But if this Man had ſhot at a tame Fowl, wherein another Man had Property, but not with Intention to ſteal it, and by ſuch ſhooting, had accidentally killed a Man, he would then have been guilty of Manſlaughter, becauſe done in Proſecution of an unlawful Action, *viz.* committing a Treſpaſs on another Man's Proprety: But if he had an Intention to ſteal this tame Fowl, then ſuch accidental killing of a Man would have been Murder, becauſe done in Proſecution of a felonious Intent, *viz.* an Intent to ſteal: So a Man of Malice intends to burn one Houſe, and, in Execution thereof, happens to burn another Houſe; this is a malicious and felonious burning of this other Houſe, becauſe ſprung out of a malicious and felonious Intent: The like might be inſtanced, where Poiſon was intended to be given to one Perſon, and another takes it, and eats it, and thereby dies. And there were other Caſes of the like Nature, where Acts done in Proſecution of felonious Intents, participate of the Nature of their Original from whence they ſpring.

That the Indictment on this Statute, was for a certain particular Intent; for purpoſely, maliciouſly, and by lying in wait, ſlitting Mr. *Criſpe*'s Noſe, with an Intention, in ſo doing, to maim or disfigure. As to the Fact of ſlitting the Noſe, that was directly or poſitively ſworn; there could be no Doubt but it was an unlawful Slitting: But the Defence the Priſoners made, was, That if they did ſlit the Noſe, it was with an Intention to kill, and not with an Intention to maim or disfigure. Now, if the Intention was to murder, they were to conſider, whether the Means made uſe of to accompliſh that Murder, and the Conſequences

1721. 8 Geo. I.

ſequences of thoſe Means, were not in the Intention and Deſign of the Party? And whether every Blow and Cut, and the Conſequences thereof, were not intended, as well as the End for which it was alledged thoſe Blows and Cuts were given?

And if they were ſatisfied on the Whole, that *Woodburne* did, on Purpoſe, and of Malice fore-thought, and by lying in wait, unlawfully ſlit the Noſe of *Edward Criſpe*, with an Intention, in ſo doing, to maim or disfigure; and that *Arundel Coke* was feloniouſly preſent at the Commiſſion of this Fact, and aiding and abetting therein, they would find them guilty: But if this was not found to their Satisfaction, they were to acquit them.

Here *Coke* objected, That the Noſe could not be ſaid to be ſlit, within the Meaning of the Statute, becauſe the Edge of it was not cut through.

The Chief Juſtice anſwered, It was true, the Edge of the Noſe was not ſlit; but the Cut was croſs the Noſe, which ſeparated the Fleſh of the Noſe, and cut it quite through into the Noſtril; which he took to be a Slitting the Noſe, within the Meaning of the Act.

The Priſoners convicted. The Jury being withdrawn about half an Hour, brought the Priſoners in GUILTY. And the Priſoners were called to receive Sentence on the 14th of *March*: When *Coke* inſiſted, in Arreſt of Judgment, That it was a very penal Statute they were indicted upon, and ought not to be carried beyond the expreſs Letter of it: That all the Circumſtances deſcribed in the Statute, muſt concur, to conſtitute the Crime: And here the Intention to maim and disfigure, was not proved: Nor was it any Objection, to ſay, That the Crime which was proved, was much worſe than that which was deſcribed by the Statute; for if it was worſe, it could not be the ſame.

1721. 8 Geo. I.

The Chief Juſtice anſwered, He did agree, that if any of the Circumſtances preſcribed by the Statute were wanting, then his Caſe was out of the Statute: But whether all the Circumſtances, required by the Statute, did not concur in this Caſe, was a Matter of Fact, which the Jury, who were proper Judges of it, had tried, and found them all to concur.

Then he claimed the Benefit of the Pardon, offered in the *Gazette*, to any one that ſhould diſcover the Aſſaſſins: But was told, Such a Promiſe could not be pleaded in Arreſt of Judgment, if he was entitled to the Benefit of it; and thereupon Sentence of Death was pronounced; and they were both executed at St. *Edmundsbury*, on *Saturday* the 31ſt of *March*, 1722. *and executed.*

1722. 9 Geo. I.

The Trial of CHRISTOPHER LAYER, Eſq; for *High-Treaſon*, at the *King's-Bench* Bar, in *Michaelmas*-Term, 1722. 9 *Geo.* I.

1722. 9 Geo. I.

Layer's Trial. The Indictment.

THE Indictment was found by an *Eſſex* Grand Jury, and charged the ſaid *Chriſtopher Layer* with High Treaſon, in compaſſing and imagining the Death of the King: And the Overt-Acts laid to prove the ſaid Treaſon, were, 1. That the ſaid *Chriſtopher Layer*, with divers other falſe Traitors, did, on the 25th of *Auguſt*, in the ninth Year of the King; and at divers other Times before and after, at *Layton-Stone*, in the ſaid County of *Eſſex*, conſult and agree to raiſe a Rebellion, and levy War againſt the King. 2. That he did publiſh, at the Time and Place aforeſaid, a certain treaſonable Libel; purporting, among other Things, a Promiſe of Rewards to his Majeſty's Subjects, to incite them to riſe in Arms againſt the King. 3. That he conſulted and agreed to depoſe his Majeſty, and place the Pretender on the Throne. 4. That he liſted Soldiers for the Pretender. 5. And, laſtly, That he conſulted and agreed with the ſaid other falſe Traitors, to ſeize and impriſon the King.

Lynch's Evidence. The principal Witneſs againſt Mr. *Layer* was Mr. *Stephen Lynch*, who had ſerved in the Army abroad: He teſtified, That he came over from *Flanders* in *April* laſt; and was introduced to Mr. *Layer* in *June*, as a Perſon fit to be entruſted in a daring and hazardous Enterprize: And Mr. *Layer* expreſſing an entire Satisfaction in him, propoſed to him the engaging in an Inſurrection in Favour of the Pretender; and told him, that ſeveral of the Army and the Guards, and ſome Noblemen and Gentlemen, would back and ſupport them in it: That he alſo propoſed to the Witneſs the commanding a Party, to ſeize the Lord *Cadogan* the General: And depoſed, that they actually went together, to view the Avenues to the Lord *Cadogan*'s Houſe: And that the Priſoner aſſured the Witneſs, there was a great Man who did not want Courage, Wit, or Reſolution, that would have the Direction of the Enterprize, and give him his Orders at a proper Time: And that he would preſent him (the Witneſs) to that great Man: That he had ſeveral Meetings with the Priſoner at his Lodgings in *Chancery-lane*, and at the Taverns thereabouts; and their Converſation conſtantly ran upon the Feaſibleneſs of bringing about another Revolution; and on the general Diſaffection of the People: That the Witneſs expreſſing his Uneaſineſs, that the Affair was delayed ſo long; and intimating, that he ſhould be obliged to go beyond Sea again for Want of Money, the Priſoner, gave him at ſeveral Times, eight or ten Guineas; and informed him, they intended to begin the Inſurrection at the breaking up of the Camp in *Hyde-Park*: And that the *Tower* would be ſeized, and put into their Hands by an Officer of the Guards, who had contrived to mount that Guard at the Time of the Inſurrection, on Purpoſe to facilitate the Attempt: That he met the Priſoner afterwards at a Tavern, with a Perſon he took to be a Serjeant of the Guards by his Habit; and they all drank Succeſs to the Enterprize.

Lynch

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Lynch further teſtified, That on the Day the Biſhop of *Rocheſter* was apprehended, the Priſoner asked him to ride out with him to take the Air, and accordingly they rode out together, about Eleven o' Clock the next Day, through *Whitechapel* into *Eſſex*, and upon the Road the Priſoner ſaid, they would go to the Lord *North and Grey*'s, to whom he would recommend the Witneſs as his Friend; but coming to the *Green Man* at *Layton-Stone*, he ſaid they had better dine there, becauſe Dinner would be over before they could get to my Lord *North and Grey*'s; and while a Beef-Steak was getting ready, they diſcourſed of the Uneaſineſs of the Nation, of the Inclination of the People to another Revolution, and how to bring it about; and the Priſoner ſhewed him the latter Part of a written Paper, wherein the People were incited to riſe, and ſhake off the Oppreſſions they ſuffered under the preſent Adminiſtration; and three Guineas were offered to every Horſeman and Serjeant, two Guineas to every Corporal, and one Guinea to every private Soldier in the Army, to invite them to revolt, with Promiſes of Preferment; and the Earl of *Cadogan* was mentioned as in Cuſtody, to induce People to join them: That the Priſoner talked of the Declaration as of his own Compoſing, and he believed it was his Writing; but there were ſeveral Interlineations, and ſeveral Words daſhed: And the Priſoner ſaid, He wiſhed Matters might be ordered ſo, that the Witneſs might have the ſeizing of ſome Miniſters of State, mentioning the Lords *Townſhend* and *Carteret*, and Mr. *Walpole*; and added, When the Deſign was put in Execution the Army would declare in their Favour, and they would ſend a ſtrong Guard to ſecure the King from any Inſult.---That when the Witneſs ſhewed his Uneaſineſs at the Delay, the Priſoner ſaid, if he could propoſe any Thing more proper, he ſhould do it: That having ſtaid near an Hour at the *Green Man*, they rode to the Lord *North and Grey*'s, where the Priſoner introduced him to his Lordſhip as his Friend: They lay there, and came away after Dinner the next Day; and Mr. *Layer* told the Witneſs, that he had recommended him to his Lordſhip as his particular Friend.----That he went afterwards to the Lord *North and Grey*'s, where he met Mr. *Layer*, and telling him, he was afraid their Hopes were defeated, he bid him not be uneaſy, but prepare to execute the Deſign at the breaking up of the Camp; and at another Time ſaid, Rather than all ſhould fail, he would riſe, and be a ſecond *Maſſinello*.

Plunkett's *Evidence.*

Matthew Plunkett, an old Serjeant of the Guards, teſtified, That Mr. *Layer*, the Priſoner, gave him Money to liſt Men for the Pretender, and that he told him he had twenty-five Men ready to ſerve him; and actually brought one *Child* to Mr. *Layer*, who gave the Witneſs half a Guinea to give *Child* to be a Pretender's Man, to whom Mr. *Layer* gave the Title of King.---That Mr. *Layer* in Diſcourſe with him (the Witneſs) asked him, if he knew any Serjeants of the Guards, and ſaid, he wanted ſuch old Soldiers as he was, to diſcipline the Mob; told him the Nation was enſlaved, and the Soldiers had great Injuſtice done them, having unexperienced Men put over their Heads, though they had ſerved abroad. And when the Witneſs asked who promoted the Inſurrection, the Priſoner mentioned Lord *North* and *Grey*, Lord *Strafford*, General *Primroſe*, and General *Webb*; and ſaid, thoſe who did their King and Country Service on this Occaſion, would be for ever taken care of and preferred; and added, that there were *Dutch* Forces brought in to take away their Rights and Liberties; they muſt keep a *Dutch* Army, to make War upon themſelves.

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Then a Parcel of Papers was produced in Court, which one Mrs. *Maſon* teſtified the Priſoner left with her, to be kept carefully, and were ſeized by the Meſſengers in her Lodgings; among which one was read, which the King's Counſel denominated, *The Scheme for the Inſurrection*, being of the following Tenor, *(viz.)*

Layer's *Papers produced in Evidence againſt him.*

1. Let the General and only one Officer of Note in the Camp agree upon a Day of Execution.

2. Let the Officer that Day put himſelf on the *Tower Guard*.

3. As there are eight Serjeants, *(viz.)* three of the firſt Regiment of Foot-Guards, three of the Second, and two of the Third, all ready to obey Orders: Early that Morn, let the Officer ſee a ſingle Perſon, namely *George Wilſon*, who manages theſe Serjeants, and give him Directions to bring them all to ſome convenient Place, at Four in the Afternoon.

4. Then the Officer muſt give each Serjeant Money ſufficient for the Purpoſe, and direct 'em, that each Serjeant order twenty-five Men (making together two hundred, which they have ready) to go ſingly out of the Camp, and meet together at ---- Church-Yard, exactly half an Hour paſt Eight in the Evening; when and where another Officer, that they know, muſt meet 'em, and take the Command; give 'em Muskets ready loaded, and march with them in a Body to the *Tower*-Gate, at Nine that Night exactly.

5. Our Friend, the Officer within, muſt, preciſely at that Hour of Nine, be on the Guard at the *Tower*-Gate; and ſeeing this Body of Men appear, order the Garriſon to let 'em in, as a Recruit ſent to the *Tower-Guard*.

6. As ſoon as ever they have entered to ſeize the Arms at the *Tower*-Gate, ſhut the Gate up, and ſecure every one in the *Tower* that the Officer on Guard gives them Orders to ſecure; but not ſhed any Blood.

7. The *Tower* being thus ſeized, to leave only a ſmall Guard there, under that Officer who lets 'em in; and then, with all thoſe that join you, march directly to the *Exchange*, where the great Doors muſt be ready opened, and the General there in Perſon.

8. At the exact Hour of Nine, that the *Tower* ſhall be thus ſeized, the Perſons of ſome great Men to be arreſted at their Houſes, brought directly into the City, and delivered to the General.

9. That upon our Meeting at the *Exchange*, the annexed Proclamation to be ſpread about; the Gates of the City to be ſhut up, and Pieces of Cannon brought down againſt 'em; but

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but every Man that desires to enter the Gates, before any regular Force appear, to be admitted to come in; and after the General has appointed a Guard at each Gate and Inlet of the City, with proper Officers to command there, let him march back to *Tower-Hill* for a Place of general Rendezvous, under the Canon of the *Tower*, and order the Lord Mayor a good Guard to watch over the Bank; but first take Money from thence to the *Tower*, in order to pay the Men.

10. The Artillery in the Camp to be seized.

11. The King to be secured, and sent to the *Tower*.

12. Horse Officers, their Friends in the Camp, to march into the City.

13---18. Four Half-pay Captains to command each a Party; one in *Southwark*, the Second in the *Privy-Garden*, the Third in *St. James's Park*, and the Fourth in *Tothill-Fields*.

19. A Captain to lead the Watermen.

20. Orders to be sent to their Adherents in the Country to rise.

21. An Officer to go to *Richmond* to seize Prince *Pretty-Man*.

Then one of the Pretender's Receipts was read, which was found among the said Papers, and said to be used for taking up Money for this Enterprize, being as follows:

I *Acknowledge to have received from the Sum of which Sum I promise to repay, with an Interest for it, at the Rate of* per Ann.

JAMES *R.*

Mr. Stanyan's *Evidence.*

Mr. *Stanyan*, one of the Clerks of the Council, testified, That when the Lords of the Council asked Mr. *Layer* the Meaning of these Receipts signed by the Pretender, and what Use he made of them; he said, that during the Time he was at *Rome*, he had settled a Correspondence with Sir *William Ellys*, according to the Directions he gave him; and he told him, if he could send any Receipts, signed by his Majesty, or the King, as he called him, he thought Money might be raised upon them for carrying on the Cause.

Mr. Delafaye's *Evidence.*

Mr. *Delafaye* testified, That Mr. *Layer* confessed before the Council, that he received such Receipts from Sir *William Ellys*, and that he intended to have tried his Friends, and to have raised Money on those Receipts; and that they had a Precedent for it a little before the Restoration, when such Receipts were given by King *Charles* II.

Letters, &c. read in Evidence.

Then several Letters that passed between Sir *William Ellys* and Mr. *Layer*, found in the same Parcel, were read; whereby it appeared there was a Correspondence between Mr. *Layer* and the Pretender's Court at *Rome*; and in one of them a Design of engaging some Soldiers of the Army in their Interest is mentioned, if the Letters that were written in Cypher were rightly interpreted.

Then some Lists were read of the Officers of the Guards, and the Number of Men and Horses under their Command, and Lists of the Officers in the *Tower*.

After which Mr. *Stanyan* testified further, That Mr. *Layer* confessed before the Council, that he went with Mr. *Lynch* to the Lord *North and Grey*'s; and that they dined at the *Green-Man* at *Layton-stone* as they went: That he recommended *Lynch* to the Lord *North and Grey*, as a proper Person to be employed in the Insurrection; and that, *Lynch* having told *Layer* before, that he would seize Lord *Cadogan*, *Layer* mentioned *Lynch* to his Lordship, as a proper Person for such an Undertaking; and that they drank at the Lord *North and Grey*'s the Healths of the Pretender, his Wife, and the young Prince.

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Further Evidence of the Prisoner's Confession.

Mr. *Stanyan* and Mr. *Delafaye* also testified, That Mr. *Layer* confessed before the Council, That he had been at *Rome*; that he had had two Conferences with the Pretender; that he had acquainted him with the Disaffection of the Nation, on Account of the Losses that had been sustained by the *South-Sea*. He said, in general, the Nation was well-affected towards him; and that he knew Persons of Estate, not Quality, that were in his Interest. Then he proposed to have Credentials, or Tokens, of the Pretender's Regard to him; which was not granted him. Then he desired the Pretender's Spouse should stand Godmother to his Child: The Pretender said, he would consider of it; and Colonel *Hay* brought Mr. *Layer* Word that she consented; and it was agreed, the Dutchess of *Ormonde* should represent her. And *Layer* desired to know who was to be the Godfather: To which it was answered, the King himself, meaning the Pretender. *Layer* then desired to know who should represent him; and it was said, *Layer* would find one, when he came to *England* proper for the Purpose. That when he came to *England*, he went to Mr. *Thompson*, to advise with him about it, who went to my Lord *Orrery*, to desire him to stand as Proxy for the Pretender: My Lord *Orrery* declined it; then he went to my Lord *North and Grey*, who accepted it. The Child was christened at *Chelsea*; my Lord *North and Grey* stood for the Pretender, and the Dutchess of *Ormonde* for the Pretender's Wife.

That Mr. *Layer* also confessed before the Council, that he recommended Mr. *Lynch* to the Lord *North and Grey*, as a proper Person to seize the Lord *Cadogan*.

Mr. *Stanyan* added, That when Mr. *Layer* was seized, they found in his Bed-chamber two Pair of Pistols, two Carbines and two Blunder-busses, forty or fifty Cartridges, Moulds for making of Bullets, and three or four Swords.

The Prisoner's Defence by his Counsel.

In the Prisoner's Defence his Counsel insisted, That there ought to have been two Witnesses to prove the Overt-Act that was laid in the County of *Essex*, *(viz.)* The publishing the Declaration at the *Green Man*; and that the giving *Lynch* a Piece of Paper to read, could not be deemed the publishing a Declaration, or a treasonable Act.

Then they insisted on the Improbability of the Prisoner's entering into a treasonable Conversation with *Lynch* and *Plunkett*, with whom he had little or no Acquaintance.----They observed also, That the Scheme itself seemed rather a chimerical Plan of some crazy Politicians, than a Project of Men of Sense: That there was no Forces raised to put this Project in Execution, or any Sums advanced by *Layer*, or

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or any other Perſon, proportionable to the carrying on ſuch a Deſign: That the Papers produced againſt him were none of his Hand; and the Arms found in his Houſe-writing were no more than any Gentleman might keep, for the Defence of his Family, or his Recreations; and his being at *Rome* with the Pretender, though that was made High-Treaſon, was no Evidence of the Treaſon laid in the Indictment.

Witneſſes againſt the Credit of the King's Witneſſes.

Then the Defendant called his Witneſſes, who teſtified that Mr. *Lynch* was a Perſon of very indifferent Reputation; and ſeveral of them ſaid he had a vile infamous Character.

Abundance of Witneſſes gave *Plunkett* the like Character.

Other Witneſſes depoſed, That Mrs. *Maſon*, who pretended to have the Cuſtody of the Priſoner's Papers, was a lewd Woman, a Thief, and a Cheat, and had been in *Bridewell*; from whence the Priſoner inferred, that none of them deſerved any Credit.

Reply of the King's Counſel.

The King's Counſel, in their Reply to the Priſoner, inſiſted, that one Witneſs of one Overt-Act in the County where the Indictment was laid, and another Witneſs of another Overt-Act, of the ſame Species of Treaſon, in another County, were ſufficient to convict him: That the Paper the Priſoner communicated to *Lynch* was certainly a treaſonable Paper, and his ſhewing it to him at the *Green Man*, was a ſufficient Publication; and that there was a treaſonable Conference alſo proved between the Priſoner and *Lynch* at the *Green Man*; which was another Overt-Act of the Treaſon in *Eſſex*.

That as to the Improbability of his talking Treaſon with *Lynch*, or *Plunkett*, on ſo ſhort an Acquaintance; it was evident, he had been very familiar with them: And where a Fact was poſitively ſworn, Improbabilities were of little Weight; they were only conſidered where a Matter was doubtful.

That though the Scheme had been repreſented as ridiculous and improbable; if the ſeveral Articles were compared together, they would be found conſiſtent: Every Quarter of the Town was provided for, Diſpoſitions made of certain Numbers of Men, and Care taken to preſerve their Communication; and it was framed by the Conſpirators, upon the Computation of a Force, of which they thought themſelves aſſured. It was plain they had a Dependance, however ill-founded, upon the Diſcontents raiſed in the Minds of the People, and on corrupting great Numbers in the Army, and had Hopes of receiving foreign Aſſiſtance: That the Priſoner had called ſcarce any Witneſs to contradict the Facts proved by the King's Evidence, but only to the Character and Credit of the Witneſſes; and it was not to be expected that Conſpiracies of this kind ſhould be proved by Perſons of the beſt Characters; and to ſay that ſuch Witneſſes are not to be believed, was in Effect to ſay, that no Evidence of a Plot, was to be believed: But whatever their Characters were, their Evidence was abundantly confirmed by the Priſoner's Witneſſes themſelves, and by his own Papers, found in *Maſon*'s Cuſtody; and laſtly, by the Priſoner's own Confeſſion before the Council.

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After which, the King's Counſel produced Witneſſes, to ſupport the Teſtimony of thoſe who had given Evidence againſt the Priſoner, and to clear up their Characters.

The Chief Juſtice's Directions to the Jury.

The Chief Juſtice, in his Directions to the Jury, informed them, that the Points of Law were as the King's Counſel had ſtated them, and appeared entirely ſatisfied with the Evidence: Whereupon the Jury, after a Receſs of half an Hour, brought the Priſoner in

The Priſoner convicted.

GUILTY.

The Priſoner afterwards moved in Arreſt of Judgment, that there was no Overt-Act of Treaſon found in *Eſſex*; but the whole Bench were of Opinion, that the conſulting and agreeing to levy War, which was one of the Facts proved at the *Green Man*, was an Overt-Act of compaſſing the King's Death.

Exceptions in Arreſt of Judgment.

Then the Priſoner's Counſel objected, That the treaſonable Words in the Declaration ought to have been recited in the Indictment; and cited the Opinion of all the Judges for it in Dr. *Sacheverell*'s Caſe: But the Court anſwered, it was ſufficient to ſet forth the Subſtance, as had been ruled in *Francia*'s Caſe; and Mr. Juſtice *Eyre* ſaid, It was indeed the Opinion of the Judges, at Dr. *Sacheverell*'s Trial, that the particular Words ſuppoſed to be criminal, ought to be expreſsly ſpecified in every Indictment; and I can't forbear ſaying, That it was a greater Surprize to *Weſtminſter-Hall*, and particularly to thoſe who attended this Court; for we had learned from my Lord Chief Juſtice *Holt*, that a Libel might be deſcribed either by the Senſe and Subſtance, or by the particular Words; and that an Indictment, or Information, in either of theſe Forms, would be good. In the Books of Entries you will find ſeveral Inſtances where Slanders and Perjuries are charged in *Latin* as falſe and ſcandalous Aſſertions, and not in the Words ſpoke. In *Stayley*'s Caſe, who was indicted for treaſonable Words, it was charged in the Indictment, that ſpeaking of the King, he had traitorouſly declared, *Quod ipſe predictus* Stayley *ipſum Dominum Regem interficeret:* And the Fact was, that *Stayley* in Converſation had ſpoke Words to this Effect in *French*, and this was thought ſufficient to convict him of High-Treaſon; and yet the particular Words ſuppoſed and adjudged to be Criminal, were not ſpecified in the Indictment; and I don't find that the ſpecifying the particular Words was ever held to be neceſſary, till this ſudden Opinion was given; and therefore I can't hear it urged as an Authority, without offering my Reaſons to the contrary.

Reſolved, That the obnoxious Words need not be laid in the Indictment.

The following Caſe alſo was put by Serjeant *Pengelly*, *viz.* ſuppoſe a Man ſhould proclaim the Pretender at *Charing-Croſs*, and read his Declaration, exciting the People to revolt; and this Declaration ſhould be carried off, ſo that it could not be recovered, and produced in Evidence, might not that Perſon be indicted for High-Treaſon, without ſetting forth the particular Words he read out of the Declaration?

To which the Priſoner's Counſel anſwered, He might: So that this grand Point of ſpecifying the very obnoxious Words in an Indictment was entirely given up at this Trial, and

Sentence

1722. 9 Geo. I.

Sentence paſſed on the Priſoner.

Sentence was paſſed on the Priſoner as a Traitor; but he was reprieved from Time to Time, till the 16th of *May*, 1723, and then executed at *Tyburn*, his Head ſet upon *Temple-Bar*, but his Body ſuffered to be interred by his Friends.

1722. 9 Geo. I.

Reprieved for half a Year, and then executed.

1723. 9 Geo. I. The Attainder of FRANCIS Lord Biſhop of *Rocheſter*, JOHN PLUNKETT, and GEORGE KELLY, *for a Treaſonable Conſpiracy*, in the Month of *May*, 1723. 9 *Geo.* I.

1723. 9 Geo. I.

Biſhop of Rocheſter's *Attainder.*

IT being much too ſoon to make juſt Obſervations on theſe Attainders, I ſhall only take Notice, that ſome great Men having conceived an Opinion, that the Biſhop of *Rocheſter*, Mr. *Plunkett*, and Mr. *Kelly*, were concerned with Mr. *Layer* in the Plot to bring in the Pretender; and finding that *Layer* would not become an Evidence againſt them, though he had been reprieved from Time to Time, for ſeveral Months, in Expectation of it, and they had no other *legal* Evidence againſt them, an Act of Parliament was paſſed on purpoſe to attaint them: Yet the Miniſtry, it ſeems, had ſo much Tenderneſs for the Biſhop, in regard of his high Station in the Church, and his inviolable Attachment to the *Hanover* Succeſſion, that they did not think fit to take the Forfeit of his Head, but were content to deprive him of his Preferments, and baniſh him: And *Plunkett* and *Kelly* being in the like Circumſtances, their Lives alſo were ſpared; and they were only doomed to perpetual Impriſonment.

The Preamble of the Act againſt the Biſhop of *Rocheſter*, is as follows:

Preamble of the Act of Attainder.

Whereas in the Years 1721 and 1722, a deteſtable and horrid Conſpiracy was formed, and carried on by divers Traitors, for invading your Majeſty's Kingdoms with Foreign Forces; for raiſing an Inſurrection and Rebellion againſt your Majeſty; for ſeizing the *Tower* and City of *London*; and for laying violent Hands upon your Majeſty's moſt Sacred Perſon, and upon his Royal Highneſs the Prince of *Wales*, in order to ſubvert our preſent happy Eſtabliſhment in Church and State, by placing a Popiſh Pretender on your Throne: And whereas, for the better concealing and effecting the ſaid Conſpiracy, divers treaſonable Correſpondences were, within the Time aforeſaid, carried on by Letters written in Cyphers, cant Words, and fictitious Names; which Conſpiracy, had it not been diſappointed by the Goodneſs of Almighty God, would have deprived your Majeſty's Kingdoms of the Enjoyment of their Religion, Laws, and Liberties, involved them in Blood and Ruin, and ſubjected your People to the Bondage and Oppreſſion of *Romiſh* Superſtition and Arbitrary Power: For which execrable Treaſon *Chriſtopher Layer* hath been indicted, tried, convicted, and attainted: And whereas *Francis* Lord Biſhop of *Rocheſter*, notwithſtanding the many ſolemn Aſſurances by him given of his Faith and Allegiance to your Majeſty, by taking the Oaths by Law appointed to be taken, inſtead of the Oaths of Allegiance and Supremacy; which Oaths he had likewiſe taken at ſundry Times, during the reſpective Reigns of their late Majeſties King *William* and Queen *Mary*, and of her late Majeſty Queen *Anne*; and notwithſtanding he had frequently abjured the Pretender, hath in direct Violation of his ſaid repeated Oaths and Obligations, and to the great Scandal of Religion and his holy Function, been deeply concerned in forming, directing, and carrying on the ſaid wicked and deteſtable Conſpiracy, and hath been a principal Actor therein, by traitorouſly conſulting and correſponding with divers Perſons to raiſe an Inſurrection and Rebellion againſt your Majeſty within this Kingdom, and to procure a Foreign Force to invade the ſame, in order to depoſe your Majeſty, and place the Pretender on your Throne; and by traitorouſly correſponding with the ſaid Pretender, and Perſons employed by him, knowing them to be ſo employed: Therefore, to manifeſt our juſt Abhorrence of ſo wicked and abominable a Conſpiracy, and our Zeal and tender Regard for the Preſervation of your Majeſty's Perſon and Government, and of the Proteſtant Succeſſion in your Majeſty's Royal Family, the ſolid Foundations of our preſent Happineſs and future Hopes; and *to the End no Conſpirator may by any ſubtil Contrivance or Practice whatſoever eſcape Puniſhment*; and that all others, may by the Juſtice of Parliament, be for ever hereafter deterred from engaging in any traitorous Conſpiracies or Attempts;

Of what Uſe is the Act for regulating Trials in Caſes of Treaſon, which requires two Witneſſes?

It is enacted, That *Francis* Lord Biſhop of *Rocheſter*, from and after the firſt Day of *June*, 1723, ſhall be deprived of all his Offices, Dignities, Promotions, and Benefices Eccleſiaſtical, as if he was naturally dead, and be diſabled to enjoy any Office, Dignity, Promotion, Benefice, or Employment whatſoever, and ſhall be for ever baniſhed his Majeſty's Dominions: And, if he be found in them after the 25th of *June*, 1723, he ſhall be adjudged guilty of Felony without Benefit of Clergy; as ſhall all Perſons who harbour or conceal him here.

All Perſons correſponding with the Biſhop without Licenſe, are alſo made guilty of Felony, without Benefit of Clergy.

And it was enacted by another Statute, That *John Plunkett* ſhould be committed to ſome Jail, or Priſon, by one of the Secretaries of State, and there remain during his Majeſty's Pleaſure.

An Act of the like Tenor paſſed againſt *George Kelly*.

The Biſhop died in *France* 22 *Feb.* 1731-2; *Kelly* made his Eſcape out of the *Tower October* 25. 1736; and *Plunkett* ſtill remains a Priſoner there.

The

1723-4. 10 Geo. I.

Arnold's *Trial.*

The Trial of EDWARD ARNOLD, *for Felony*, in *Shooting at and Wounding Thomas* Lord *Onſlow*, at the Aſſizes held at *Kingſton* for the County of *Surry*, on the 20th of *March*, 1723-4. 10 *George* I.

1723-4. 10 Geo. I.

The Indictment.

THE Indictment was founded on the Statute of 9 *Geo.* I. *cap.* 22. called *The Black Act*, and charges, that the Priſoner *Edward Arnold*, of the Pariſh of *St. Nicholas* in *Guilford*, in the County of *Surry*, on the 28th of *Auguſt*, in the 10th Year of the King, at the Pariſh of *St. Nicholas* aforeſaid, made an Aſſault on *Thomas* Lord *Onſlow*, and feloniouſly, and of his Malice aforethought, diſcharged a Gun at the ſaid Lord *Onſlow*, loaden with Shot, giving him thereby one grievous Wound in the Left Shoulder, of the Breadth of ſix Inches, and of the Depth of two Inches; againſt the King's Peace, and the Form of the Statute in that Caſe made and provided.

The Caſe.

The Caſe was this: The Lord *Onſlow*, and ſome other Gentlemen, returning from a Fox Chaſe, through a narrow Lane, within half a Mile of *Guilford*, on the 28th of *Auguſt*, met the Priſoner with a Gun cocked in his Hand, as if he was about to ſhoot flying; and one of the Gentlemen demanding of him, why he held his Piece cocked in that Manner, he made no Anſwer, but ſullenly paſſing by his Lordſhip a few Yards, turned about a ſudden, and ſhot him in the Shoulder; whereupon he dropped from his Horſe, and the Priſoner walked leiſurely away; but was followed, and taken by ſome of the Company.

The Fact confeſſed.

The Fact was manifeſtly proved; and indeed, neither the Priſoner, or his Friends, denied it: All that his Friends inſiſted upon was, 1. That the Priſoner was a Lunatick,

The Defence.

and out of his Senſes, at certain Times. 2. That, if he was in his Senſes, it was not Felony, becauſe his Lordſhip recovered, and was not killed; and the Priſoner was not diſguiſed, as the *Black Act* mentions.

The Priſoner made no Defence himſelf; but gave ſuch Anſwers at his Trial as might be expected from a Madman; and his Relations produced a Multitude of Witneſſes to prove, that both his Words and Actions were at ſome Times very extravagant: But it appeared, that his Friends never thought him ſo diſordered in his Senſes as to reſtrain him of his Liberty, or to put him into the Hands of a Phyſician; or indeed, to take any of thoſe Methods of Cure as are uſually taken with Madmen, though they were People of good Subſtance, and very well able to have paid a Phyſician, if they had really believed him mad: And it was obſerved that he had never done any Miſchief before.

He ſeems to have been one of thoſe Creatures that are between a Madman and a Fool, and capable of being worked up to any Miſchief by others; and had he had any Tincture of Religion, he would have been called an Enthuſiaſt, or Religious Madman.

It was evident, from ſeveral of his Speeches, that ſome People he converſed with about the Time of the preceding Election for the County of *Surry*, had repreſented my Lord *Onſlow* as an Enemy to his Country, and the Occaſion of ſome Mal-Adminiſtration in the Government; and that he believed he ſhould do his Country good Service in deſtroying this Noble Lord; and thereupon formed a Deſign to aſſaſſinate him, endeavouring to have put it in Practice in the Manner above related.

Some Obſervations of his Counſel.

Mr. *Hungerford* inſiſted in the Priſoner's Defence, That admitting he committed the Fact, and was in his Senſes, he could not be guilty of Felony within the *Black Act*, becauſe he was not in a *Diſguiſe*; for this was to be applied to every Fact mentioned in this Statute to make it Felony. If ſhooting at a Perſon without a Diſguiſe, would make a Man guilty of Felony, then, if two Men fought a Duel, and diſcharged their Piſtols at each other, they would both be guilty of Felony, though neither of them were killed.

That the Title of the Act, was, *For the more effectual puniſhing wicked and evil-diſpoſed Perſons going armed in* DISGUISE, *and doing Injuries and Violences to the Perſons and Properties of his Majeſty's Subjects:* And the Preamble of the Act only mentioned the Miſchiefs done by ſuch People in DISGUISE. The Proclamation alſo, for putting the Act in Execution, ſuppoſes ſuch Perſons to be in *Diſguiſe*, to bring them within the Penalty of the Act.

The Opinion of the Court on the Black Act.

To this Mr. Juſtice *Tracy*, who tried the Cauſe, anſwered, Becauſe he knew this Cauſe would come before him, he had a Meeting with his Brethren, to have their Opinion in Relation to this Clauſe in the Act; *viz.* The making it Felony *maliciouſly to ſhoot at any Perſon in any Dwelling-Houſe, or other Place*; and every Judge was of Opinion, this was an entire Clauſe of itſelf, and it had no Relation to the former Clauſe, of being in Diſguiſe; and that he himſelf was of the ſame Opinion before, and was in no manner of Doubt concerning it, and only asked the Opinion of his Brethren for the Satisfaction of other People: Adding, that it was certain the Circumſtance of a Diſguiſe did not extend to the next Clauſe; *viz. The ſending threatening Letters without a Name*, and conſequently the Circumſtance of a *Diſguiſe* did not extend to every Offence mentioned in the Act.

Judge Tracy's Directions to the Jury.

Mr. Juſtice *Tracy*, in his Directions to the Jury, alſo ſaid, That the Act on which the Indictment was founded, was conformable to the antient Law, where, if a Man aſſaulted another, *(with an Intent to kill him, as this Caſe was, I preſume, he means)* though Death did not enſue, it was Felony, and concluded his Directions in this Manner:

Whether the Priſoner's ſhooting at the Lord *Onſlow* was malicious, depends upon the Sanity of the Man: That he ſhot, and that willfuly, is admitted; but whether maliciouſly is the Queſtion; Whether he had the right Uſe of his Reaſon and Senſe? If he

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he was under under the Viſitation of God, and could not diſtinguiſh between Good and Evil, and did not know what he did, though he committed the greateſt Offence, yet he could not be guilty of any Offence againſt any Law whatſoever; for guilt ariſes from the Mind, and the wicked Will and Intention of the Man. If a Man be deprived of his Reaſon, and conſequently of his Intention, he cannot be guilty; and if that be the Caſe, though he had actually killed my Lord *Onſlow*, he is exempted from Puniſhment. Puniſhment is intended for Example, and to deter other Perſons from wicked Deſigns; but the Puniſhment of a Madman, a Perſon that hath no Deſign, can have no Example. This is on one Side: On the other Side we muſt be very cautious: It is not every frantick and idle Humour of a Man, that will exempt him from Juſtice, and the Puniſhment of the Law. When a Man is guilty of a great Offence, it muſt be very plain and clear, before a Man is allowed ſuch an Exemption: Therefore it is not every Kind of frantick Humour, or ſomething unaccountable in a Man's Actions, that points him out to be ſuch a Madman as is to be exempted from Puniſhment: It muſt be a Man that is totally deprived of his Underſtanding and Memory, and doth not know what he is doing, no more than an Infant, than a Brute, or a wild Beaſt; ſuch a one is never the Object of Puniſhment: Therefore I muſt leave it to your Conſideration, Whether the Condition this Man was in, as it is repreſented to you on one Side, or the other, doth ſhew a Man, who knew what he was doing and was able to diſtinguiſh, whether he was doing Good or Evil, and underſtood what he did? And, it is to be obſerved, they admit he was a Lunatick, and not an Idiot: A Man that is an Idiot, that is born ſo, never recovers: But a Lunatick may, and hath his Intervals; and they admit he was a Lunatick. You are to conſider what he was at this Day, when he committed this Fact: There you have a great many Circumſtances about the buying the Powder and the Shot; his going backward and forward: And if you believe he was ſenſible, and had the uſe of his Reaſon and underſtood what he did, then he is not within the Exemptions of the Law, but is as ſubject to Puniſhment as any other Perſon.

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Then the Jury withdrew; and after a very ſhort Receſs, brought the Priſoner in GUILTY; and he received Sentence of Death: But at the Interceſſion of the Lord *Onſlow*, he was reprieved from Time to Time; and I do not find he was ever executed.

The Priſoner convicted.

1725. 10 Geo. I.

Macclesfield's *Trial.*

The Trial of THOMAS Earl of *Macclesfield*, late Lord Chancellor of *Great Britain*, for *High Crimes and Miſdemeanors, in the Execution of his Office*, before the Houſe of Peers, on the 6th of *May*. 1725. 10 *Geo.* I.

1725. 10 Geo. I.

Articles againſt him.

THE Articles preferred againſt this Nobleman, charged him with Corruption and Extortion, in taking of ſeveral of the Maſters in *Chancery* very great and exorbitant Sums of Money, for their Admiſſion into their reſpective Offices; particularly of *Richard Godfrey* Eſq; (who purchaſed the Place of a Maſter of Sir *Thomas Grey* for 5000 *l.*) 840 *l.* of *James Lightboun*, Eſq; (who was admitted Maſter on the Death of *Samuel Browning*, Eſq;) 6000 *l.* of *John Borret*, Eſq; (who purchaſed his Place of *John Meller*, Eſq; for 9000 *l.*) 1575 *l.* of *Edward Conway*, Eſq; (who purchaſed his Place of *John Orlebar*, Eſq; for 6000 *l.*) 1500 *l.* of *William Kynaſton*, Eſq; (who purchaſed of *William Rogers*, Eſq; for 6000 *l.*) 1575 *l.* of *Thomas Bennet*, Eſq; (who purchaſed his Place of *John Hiccocks*, Eſq; for 7500 *l.*) 1575 *l.* of *Francis Elde*, Eſq; (who was admitted a Maſter on the Death of *William Fellows*, Eſq;) 5250 *l.* of *Mark Thurſton*, Eſq; who was admitted a Maſter on the Death of *John Borret*, Eſq; 5250 *l.*

They charge him alſo with admitting inſufficient Perſons to theſe Offices, Men of ſmall Subſtance and Abilities, and no ways fit to be entruſted with the great Sums and Effects lodged in their Hands: And that they were allowed to pay for their Places out of the Suitors Money, and to game and traffick with it: That *Fleetwood Dormer*, Eſq; embezzled great Part of the effects of the Suitors in his Hands, and died 25,000 *l.* indebted to them; which was moſt of it loſt by the Connivance or Contrivance of the Earl, who uſed every Stratagem and Artifice he could deviſe, to prevent an Enquiry into the Deficiencies of the ſeveral Offices, leſt the Value of them ſhould be leſſened and run down: That he unjuſtly and arbitrarily compelled ſeveral of the Maſters to contribute to make good thoſe Deficiencies: That the Earl never required any Security of the Maſters for the Sums in their Hands; but indulged them in a boundleſs Liberty of abuſing their Truſt, as their Avarice or Ambition prompted them.

That his Majeſty having directed an Enquiry into the Accounts of the Maſters in *Chancery*, the Earl, by his Advice and Authority, perſuaded the Maſters to make falſe Repreſentations of their Accounts and Circumſtances to the Privy Council, and to aſſiſt each other with Caſh, to make a falſe Shew and Appearance of their Ability, that a parliamentary Enquiry might be prevented; and obliged them to declare in Writing, at the Foot of their Accounts, That they were willing and able to pay the Ballance, although the Earl knew they were not.

The Commons alſo charge, That when upon *Dormer*'s Misfortunes (which were occaſioned

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caſioned by his trafficking with the Suitors Money, and lending it to Goldſmiths at ten *per Cent.)* it was propoſed to the Earl, to prevent the like Miſchief for the future, that the Maſters might give Security for the Money in their Hands; he would not hearken to it; for then he would have found none that would have given him 6000 *l.* for a vacant Place, or 1500 Guineas for an Admiſſion.

It was further charged, that he had declared from the Bench, that the Maſters were Men of as good Subſtance as ever filled thoſe Places; when it was commonly known, that one third of them had given as much, or more, for their Places and Admiſſions, than they were worth at the Time of the Purchaſe.

He is charged alſo with taking 100 Guineas of Mr. *Bennet*, for Leave to reſign the Office of Clerk of the Cuſtodies, in order to obtain his Majeſty's Grant of that Office to *Hugh Hammerſley* Eſq; who had purchaſed it of Mr. *Bennet*.

The King's Bounty to the Earl.

And, as an Aggravation of his Crimes, it is charged, That he was guilty of theſe Extortions, after his Majeſty had been ſo bountiful as to beſtow on him 14,000 *l.* granted his Son *George Parker*, a Teller's Place in the *Exchequer*, for Life, worth 1500 *l per Annum:* To the Earl himſelf a Penſion of 1200 *l. per Annum*; and alſo an Annuity of 4000 *l. per Annum*, beſides the Profits of the Chancellor's Office, which were very great: That, not ſatisfied with this large and ample Revenue, or regarding the Obligation of his Oath, or the Duty of his High and important Office; but entertaining wicked and corrupt Views, to procure an exceſſive and exorbitant Gain by the aboveſaid unjuſt and oppreſſive Practices; he had illegally, corruptly, and extorſively, taken and received the ſaid Sums to his own private Uſe.

The Earl's Anſwer.

The Earl, in his Anſwer, acknowledged his Majeſty's Bounty to him, as ſet forth in the Articles, and the ſaid Sums for the Maſters Places, and for the Office of Clerk of the Cuſtodies: But ſaid, He received them as Preſents and Perquiſites of his Office: That the receiving them was not prohibited, either by the Common or Statute Law; and that his Predeceſſors had received the like Preſents on the like Occaſions: He denies he admitted inſufficient Perſons to the Offices of Maſters in *Chancery*; or that he allowed or knew of their paying for their Places, or trafficking with the Suitors Money: He denies alſo, that he knew of *Dormer*'s Deficiency, till it was publickly known; nor did he contribute to the Concealment of that Deficiency, or the Deficiencies of any other Maſters; but did all that lay in his Power to repair their Deficiencies: Nor had he uſed any arbitrary Method, to compel the other Maſters to make good thoſe Deficiencies: That he did not, indeed, require Security of the Maſters, becauſe this had never been required by any former Chancellors: That he neither commanded or perſuaded the Maſters, to make falſe Repreſentations of their Accounts, or Circumſtances; or to aſſiſt each other with Caſh, to make a falſe ſhew of their Ability, to prevent a Parliamentary Enquiry: Nor did he declare, That the preſent Maſters were of as good Subſtance as ever filled thoſe Places.

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And the Earl does further ſay, That he is not guilty of all, or any of the Matters contained in the ſaid Articles, in Manner and Form as they are therein charged againſt him: And does alſo inſiſt on the Benefit of his Majeſty's Pardon, granted by Act of Parliament, in the ſeventh Year of his Reign, in Bar of the ſaid Impeachment; ſo far as the ſame extends to any Offence, or ſuppoſed Offence, committed by him, before the 24th of *July*, 1621: And inſiſts, that no Evidence ought to be given againſt him of any thing done before that Time: And doth aver, that he is not within any of the Exceptions in the ſaid Act contained.

Reply of the Commons.

The Commons replied to the Earl's Anſwer and averred their Charge to be true; and that he was guilty, in ſuch Manner and Form as he ſtood impeached.

They prove their Charge.

The Managers, having opened the Charge and the Evidence, produced their Witneſſes; and abundantly proved, that the Sums paid by the Maſters to the Earl, were not Preſents, but extorted from them; and that they were moſt of them three Times as much as any former Chancellor had taken on the like Occaſion; and the leaſt Sum was twice as much as ever had been paid on an Admiſſion to the Poſt of Maſter: That he never called the Maſters to Account, as the former Chancellors, the Lords *Cowper* and *Harcourt*, had done: That he connived at the Maſters lending and trafficking with the Suitors Money: And that he practiſed with the Maſters to conceal the Deficiency of *Dormer*, and ſome other Maſters; and there appeared to be a Deficiency of about 100,000 *l.* of the Suitors Money in the whole.

They proved alſo, That he had broken his Oath of Office, and that the ſelling Offices relating to the Adminiſtration of Juſtice, was a Breach both of the Common and Statute Law: And what is a Demonſtration, that the Earl himſelf was conſcious that he had taken too much, is, that he returned two of the Maſters half their Money, when he found there was like to be an Enquiry made into it.

The Obſervations of the Managers on the Evidence.

The Managers of the Commons, in their Obſervations on the Evidence, ſaid, They had now produced a very full and convincing Evidence, in Maintenance of the Impeachment: And that *A wicked and corrupt View, to raiſe and procure to himſelf exceſſive and exorbitant Gain and Profit, was the fatal Principle from which all this Miſchief ſprung:* The gratifying this Avarice engaged his Lordſhip to neglect every other Conſideration; to overlook that Care he owed to the Suitors of the Court; and to admit Perſons of ſmall Abilities, and every Way unqualified for the Diſcharge of ſo great a Truſt: This obliged him to connive at, and permit, the fraudulent Practice of paying the exceſſive Price of their Places, out of the Money belonging to the Suitors of the Court; and that again forced him to ſuffer, or rather to encou-

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rage, the purchaſing Maſters, to traffick and game with the Eſtates of the Suitors: There was no other Way by which thoſe liberal Purchaſers could reimburſe themſelves: And when the fatal Effects of this unbounded Liberty, which he permitted the Maſters to enjoy, began to appear; then was he compelled to become a Confederate with the deficient Maſter, to prevent its being known to the World.

That they began their Evidence with the 9th Article; which related to his taking 100 Guineas of Mr. *Bennet*, for permitting him to reſign the Office of Clerk of the Cuſtodies to Mr. *Hammerſley*; becauſe this Fact diſcovered the Man, and fully explained what Manner of Mind he muſt be endowed with, who could ſtoop to an Action ſo low and ſordid.------It is difficult, (ſays the Manager) not to feel ſome Indignation riſe, at the bare relating this Meanneſs! Mean it would have been in any Man; but for a Peer of *Great Britain*, an Earl, Lord Chancellor of the Kingdom, and a Chancellor *(ſo obliged, and ſo dearly bought)* to proſtitute ſo many illuſtrious Characters, in ſo low a Manner as to become a Broker for the Hire of 100 Guineas, is aſtoniſhing! But, my Lords, when I conſider, that the Earl was, at the ſame Time, one of the Lords Juſtices of the Kingdom, in a Commiſſion to execute ſome of the Functions of Majeſty itſelf---I want Words to expreſs ſuch a Tranſaction in its proper Colours.

In ſpeaking of the illegal Sale of ſeveral of the Offices of Maſters in *Chancery*, this Manager obſerved, *That the Money, inſtead of being voluntarily given, was unjuſtly extorted; and that, inſtead of being a Preſent, or uſual Perquiſite, it was an illegal and corrupt Bargain, and Sale of Offices relating to the Adminiſtration and Execution of Juſtice.*

The next Point he mentioned, was, the admitting Perſons to the Office of Maſters who were of mean Subſtance; and obſerved, that their being deficient at this Time was a violent Preſumption that they were of ſmall Subſtance at the Time of their Admiſſion: How elſe is it to be conceived (ſays he) that Maſters, who have been ſo ſhort a Time in their Offices, ſhould be ſo much in Arrear? *Kynaſton* was admitted but in *Auguſt*, 1721, and in 1724, there appears a Deficiency of 26,908 *l.* *Bennet* was admitted but in *June*, 1723, and in little more than a Year there is a Deficiency of 16,075 *l.* And it was remarkable that both theſe Maſters had ſworn, that all they were worth in the World was not ſufficient to pay the vaſt Prices they gave for their Offices: And yet theſe Men were choſen to be truſted, one with near 50,000 *l.* and the other with near 100,000 *l.* of the Money belonging to the Helpleſs and Miſerable; which made it evident *that the Sum the Chancellor himſelf was to receive, was the only Conſideration of admitting them, and therefore his only Care.* Mr. *Bennet* had expreſly declared, that the Earl never once asked him, either before or after his Admiſſion, any one Queſtion, in order to be informed of his private Circumſtances: And yet theſe were the Men the Earl thought fit, in open Court, while he was ſitting in the Sacred Seat of Truth and Juſtice, to declare *Men of as great Fortune, Abilities, and Skill, as ever ſat in that Court.*

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But the whole Scheme ſeems obviouſly calculated for no other End or Purpoſe, than to induce Perſons of ſmall Abilities to become Purchaſers, by facilitating and making eaſy the Method of Payment. And indeed, it was ſo eaſy (ſays the Manager,) that I wonder his Lordſhip did not meet with Perſons who would agree to give one half of the Money for an Opportunity of running away with the other: Such a Price might with as much Reaſon be called a Perquiſite, as his condeſcending to take but five or ſix thouſand Guineas, when no one would give more. It is true my Lord *Macclesfield* does, in his Anſwer, ſay, that he was ignorant of this Practice; but I apprehend his Lordſhip to be as much miſtaken in this, as he has been in other Particulars: For, my Lords, it appears by Mr. *Bennet*'s Evidence, that he not only knew of this Practice, but endeavoured to conceal it.

They who gave ſuch vaſt Prices for the Cuſtody of the Money, did not neglect the Opportunity of employing it for their own Uſe: The Proof is but too viſible; they who are rich confeſs it, and they who are Poor dare not deny it: It was the neceſſary Conſequence of his Lordſhip's Extortion, and that put it out of his Power to take thoſe Meaſures that were neceſſary to prevent that Practice. The Misfortunes of the *South-Sea* Year were ſo univerſal, that ſurely any Man, even of common Senſe, would have been upon his Guard. My Lord *Macclesfield* knew that theſe Maſters gamed with the Suitors Money themſelves, or, for an extravagant Intereſt, lent it to thoſe who did: He knew that this was the Occaſion of *Dormer*'s Deficiency; he knew that the other Maſters had it ſtill in their Pow- to do the ſame; therefore he permitted it: He took no Meaſure to prevent it; therefore he encouraged it.

But what could engage this Earl, (whoſe underſtanding is in no wiſe queſtioned) after ſo fatal a Year, thus to riſque his own Character, and what perhaps he values more, his own Fortunes, not only upon the Underſtanding, the Integrity, but even the good Fortune, of a Parcel of Men whom he had thus picked up, without either Enquiry or Care? My Lords, *As the Borrower is to the Lender, ſo a corrupt Chancellor is the Servant of his Confederate Officers*; he durſt not put a Stop to their Practices, (though his own Eſtate was embarked with theirs) leſt Reſentment and Revenge ſhould make them diſcover the infamous Secrets with which they were entruſted.

The Earl's Defence, by his Counſel.

The Earl's Counſel, in opening his Defence, ſaid, However unanſwerable the Eloquence of the Managers may be, we hope to defend the Earl againſt the Facts they have alledged; and ſhew, that they were either not done, or done with Innocence and Honour: Againſt meer Imaginations nothing can ſecure him, but your Lordſhip's Candour and Juſtice.

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The Words Orphans, and Widows, and Lunaticks, have been employed to raiſe Tenderneſs and Compaſſion, and arm your Lordſhips againſt every Argument which we can offer: Well was it commanded by the *Jewiſh* Law, Not to reſpect the Perſon of the Poor in his Cauſe, knowing the Diſpoſition of Human Nature, and the Neceſſity of guarding againſt this generous Weakneſs. This Caution ought particularly to be remembered by *Engliſhmen*, who are allowed to be more ſubject to an Exceſs of it than thoſe of any other Nation

The learned Managers have very rightly obſerved, how much your Lordſhips' Honour is concerned in this Proſecution. My Lords, It was with the greateſt Satisfaction I heard them ſay it; for I am by it induced to think, that notwithſtanding the Zeal which has been expreſſed, they will be much pleaſed to find every Member of your Lordſhip's Body innocent.

It appears from the Anſwer, and needs no Proof, that the Noble Earl was once Lord Chief Juſtice of the *King's-Bench*; and his Conduct in that great Station, will, I hope, be ſome Defence.

I may appeal to thoſe Gentlemen who are now Managers againſt him, Whether they have not applauded him with Warmth? Whether they have not commended his Zeal and Intrepidity in the Cauſe of Liberty and our Country? his ſteady Adherence to the Proteſtant Succeſſion? his uninfluenced Behaviour? My Lords, I would ask, Whether then they did not praiſe and love him? Whether they did not eſteem his being placed in that high Station (which he executed with Honour) their Comfort, their Security?

My Lords, I beg Pardon for replacing thoſe Times before your Thoughts, or for deſiring any to conſider, how an Accuſation againſt him, ſupported by meer Refinements, would at that Time have been regarded: My Lords, his experienced Merit would then have ſilenced every Objection.

If there wanted any Evidence of the high Character he bore while in that Station, we might appeal to the great Rewards his Majeſty had beſtowed upon him: Thoſe very Graces which have been exaggerated againſt him, are the nobleſt Teſtimony in his Favour. His Majeſty thought him worthy of the Great Seal, becauſe he had found him faithful in his other Truſts: His Majeſty approved him, becauſe his Subjects had: It was for their Sakes (the conſtant Motive of his Choice) that he appointed him Lord Chancellor.

This once was the Earl's Character, this once his Merit: Theſe were, nay are ſtill our Obligations to him. My Lords, experienced Worth has a Right to greater Confidence and Credit: This is a Rule of Evidence, and of common Juſtice; and unleſs the moſt convincing Proofs are offered, your Lordſhips never can believe, that one, who has done ſo greatly well, can do ſo baſely as is ſuggeſted by the Charge.

But ſuppoſing, upon ſo very ſtrict an Enquiry into the Conduct of any great Man, ſomething amiſs was found, (for the greateſt

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are but Men, and muſt have Failings); yet his former Merit is not quite to be forgot. Publick Services are thought juſt Reaſons for Remiſſion of the higheſt paſt Offences, though done perhaps meerly with a View of obtaining it: And ſhall thoſe done upon a more generous Principle, ariſing from an honeſt diſintereſted Heart, deſerve a leſs Regard?

The Earl, as well as his Counſel, ſeems to depend more on the Merit of his paſſed Services to the Crown, than on the Strength of his Defence. I ſhall endeavour (ſays he) to ſhew your Lordſhips, that the ſeveral Things charged upon me are either not true, or not criminal; or if your Lordſhips ſhall judge otherwiſe of them, yet that they were the Effects not of Wickedneſs but of Miſtake; and, *If I have ever done any thing for the Service of my Country, of the Conſtitution, of his Majeſty, and of the Royal Family, and the preſent Eſtabliſhment, and the Adminiſtration of publick Juſtice; it might not be unſuitable to the unparalleled Goodneſs of this Reign, for your Lordſhips to have Compaſſion upon the Errors, Miſtakes, and Weakneſſes of the faithful ſteady Servant of a Prince, whoſe Mercy has been ſo often extended, in ſo great a Degree, to the higheſt Crimes of his bitter Enemies.*

His own Defence.

Then he proceeds to the moſt material Part of his Defence, and ſays:

An Office may be conſidered in two Reſpects: Firſt, with Reſpect to the Duty, that is the Concern of the Publick, that the Perſon be duly qualified to diſcharge the Office well: Secondly, with reſpect to the Profit and Advantage; and that is meerly private, and concerns the Officer only; and whilſt he diſcharges his Duty well, without Extortion, or other Misbehaviour, the Publick is little concerned in it, whether the Profit be more or leſs: As in thoſe Offices, which are very numerous, and of great Conſequence, that may be executed by Deputy; provided the Deputy behave himſelf well, the Publick has never concerned itſelf what his Salary or Allowance from his Principal is, whether it be greater or leſs.

The Earl endeavours to juſtify the Practice of ſelling Offices.

And as the Perſon who is put into a very beneficial Office, ſuch as one of theſe, for his Life, has not any antecedent Right to the Office, and therefore, not to the Profits ariſing thereby, and he that prefers him is not bound to give it him; therefore when he puts him into it, he in Effect grants him all the Profits of the Office for his Life: And if the Officer make him a Preſent for it, either unexpected, by way of Thanks, after he is put in; or expected, which he had told him of before; or give it at the Time, or before that he is admitted; I ſee not any Immorality either in the Giver or Taker: It is Money given for Profits to be received during Life.

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1725. 10 Geo. I.

I agree, that a Perſon taking a Preſent, and putting in an unfit Perſon, when he knew him to be ſo, or had juſt Ground to believe him ſo, is criminal: Not becauſe he had taken a Preſent, but becauſe he had prejudiced the Publick knowingly: It may be an Aggravation, that he had taken Money; but the Crime is, the Wrong done to the Publick in the Perſon advanced: It had been the ſame Crime, had he done it for the Sake of Kindred, or Friendſhip, or for Recommendation, or any other Reaſon.

But if a Perſon very well qualified be placed in an Office, and the Publick has all the Advantage from him that it can have from an Officer in that Poſt, and ſo I who have placed him have well diſcharged my Duty to the Publick; is it material how well I loved him, how nearly he is related, who it was that perſwaded me to prefer him, or what he gave me on that Account, whether before or after he was put in; Will any of theſe Circumſtances make me criminal in an Action by which I ſerved the Publick well? If the Publick have all the Benefit it can have, where is the Immorality? Where is the Crime, if I have an Advantage too? eſpecially if Uſage has in ſome Sort annexed that Advantage to my Office, which is taken from his?

Obj. I know it may be objected, with great Appearance of Reaſon, that this Practice is dangerous; it leads to Inconveniences; it is a Temptation to him that diſpoſes of Places to make ill Officers, and a Temptation to the Officers to extort Money, and abuſe Subjects in order to get up their Money again.

Anſw. But is it therefore a Crime, where the Temptation is reſiſted, and a very good Officer is put in, and he behaves himſelf perfectly well?

The Point of the Charge now under Conſideration reſts ſingly on this, That I took Money for admitting Mr. *Francis Elde* (for inſtance); and though taking Money is a dangerous Practice, and may be a Temptation to let in an ill Man, is it therefore a Crime to put in *Francis Elde*, who is not alledged to be an ill Man, or any Way unfit; and is really an excellent Maſter?

This Argument concludes, only that the allowing it to be generally practiſed is inconvenient, and may, in the Deliberations of the Legiſlature, be properly uſed to prove it fit to be reſtrained by a Law: But is not of Force, in a Court of Juſtice, to prove it to be a Crime in every Inſtance, becauſe it may occaſion a Crime in ſome. But farther, as to the Matter of Temptation to put in one unfit:

The Liberty of preferring Relations to Offices, is a Temptation to put in Perſons unfit; and without doubt has often prevailed. Suppoſing therefore, it might be proper Matter of Deliberation in the Legiſlature, how far a Reſtraint ſhould be put upon it; yet in the mean Time, is advancing a Relation to an Office which he is fit for, a Crime, becauſe in other Inſtances it has occaſioned a Crime, or may do ſo, or is a Temptation to it? And would it be a ſufficient Charge of a high Crime againſt me, to ſay, that I illegally and corruptly put into ſuch an Office *A. B.* my Son, or my Brother? I apprehend not.

Till a Reſtraint is laid, the Thing may be innocently done.

1725. 10 Geo. I.

If a Reſtraint be laid, the Law will operate upon it, ſo far as that Reſtraint extends; but farther than that, and the Conſequences declared to enſue thereupon, it will remain as before.

Conſidering this, therefore, in itſelf, and upon the Reaſon of the Thing, where is the Force of the Argument? You took 5000 *l.* for putting in Mr. *Elde*, or Mr. *Thurſton*, a very fit Perſon, and an excellent Maſter; and therefore you are Criminal, becauſe ſome Body elſe, at another Time, may put in a Maſter not fit, upon his giving a Preſent.

If this, then, be not Criminal in itſelf, how do they prove it to be ſo by the Common Law?

The only Caſe they have inſtanced as any Authority for that Purpoſe, is that of *Stockwith* and *North*, in *Moor*'s Reports. I have looked upon the Caſe as it appears in that Book, and it appears to be thus:

North *was fined in the* Star-Chamber, *for that he, being Sheriff of* Nottingham *in the* 43*d Year of Queen* Elizabeth, *took Money for the Goalerſhip and Bailiwick for that Year: He gave them firſt to his Servants, who ſold them; but he himſelf received the Money. And this was adjudged to be letting to Farm of his Country, contrary to the Statute* 4 Hen. IV. cap. 5. *Yet there note, that the Statute itſelf gives a Penalty certain and pecuniary, and is* Malum prohibitum, non in ſe. *But the Court took it, that in as much as Corruption follows upon the Covetouſneſs of Officers, and they are forced thereto by the Prices which they give for Things which ought not to be ſold; that this putting to Farm, and ſelling of Offices, is* malum in ſe, *and fineable.*

It appears here, that this was a Proſecution upon the Statute 4 *Hen.* IV. for the Point adjudged was, that this was contrary to that Statute; and therefore, whether what was done, was againſt the Common Law, or *malum in ſe*, or not, was not at all in Judgment before the Court.

So that this looſe Expreſſion mentioned by *Moor*, (coupled too with a groſs Miſtake) not at all to the Point of Judgment, is of very little Force, to prove the Caſe to which it is applyed to be againſt the Common Law; and of leſs, to prove the preſent Caſe to be ſo.

What then is there farther offered? Do they ſhew, that by the Common Cuſtom of *England*, which is properly the Common Law of *England*, the taking Money for Offices has been from Time to Time puniſhed or condemned as Criminal?

No, it is admitted on the one Hand, that there is not one Inſtance of its having been puniſhed, or condemned as Criminal, at the Common Law.

And, on the other Hand, it is notorious, that in Fact the greateſt Offices have anciently been ſold, even by the Kings: And that not in a clandeſtine Manner, but ſo, that the Price and what it was paid for, have been entered upon Record.

My

1725. 10 Geo. I.

My Lords, I have gone through all the ſeveral Articles that have been endeavoured to be ſupported againſt me; and I think I may ſay, as I did in the Beginning, that except thoſe relating to the Diſpoſal of Places, which are of another Kind and another Conſideration, all the reſt muſt, to be made Criminal, turn upon that Aggravation in the Articles, *from my inordinate, wicked, and corrupt Deſigns of procuring to my ſelf exceſſive and exorbitant Gains and Profits*, by divers unjuſt and oppreſſive Practices after-mentioned. It is ſuch a corrupt Heart only can change Actions that in themſelves are innocent, and ſome of them, perhaps, commendable, into ſo many Crimes.

And, yet, it is very extraordinary, and ſcarce poſſible to be conceived, but that, if there had been ſuch a corrupt Heart, it muſt have broke out upon ſome other Occaſion of my Life. Not one Inſtance of my whole Life has been yet produced to ſhew it.

Several of thoſe under me have been examined; ſeveral Officers immediately attendant on me, that received conſiderable Profits and Salaries, to the Amount of three or four thouſand Pounds *per Annum*, and more: If I had ſet my Heart upon Gain, a certain Profit might have there been yearly made, amongſt thoſe whom I had wholly at Mercy, and in private. But there has no Appearance been found of any Thing of that Kind: And is it not more likely that I ſhould have laid hold of a certain Profit, than be laying Schemes for Advantages upon the uncertain Contingency of the Sales of Maſters Offices?

The Value of ſuch an Expectation is a mere Trifle; and, with reſpect to the Probability of its happening, it was exceeding uncertain, whether I ſhould have an Opportunity of putting in one ſingle Maſter.

Three Maſters have happened to dye in my Time; and two of them in leſs than the Space of a Year: But I think not one in nine Years before.

My Lord *Cowper* admitted but one in the laſt Time of his being Chancellor, which was four Years; and that was upon a Surrender.

There are twenty-four Curſitors; only one has died in my Time: Thirty Commiſſioners of Bankrupts; only one died in above ſix Years.

Surrenders of the Offices of Maſters are rarely till after ſixteen or ſeventeen Years, ſometimes thirty or forty Years Enjoyment.

My Life was very uncertain: The Office of Chancellor much more ſo.

Little, therefore, was to be hoped from the Profit to be made by Maſters Places.

My Lords, in the next Place, I apprehend that it appears, I did not take the Advantage I might have taken.

When the Time came for me to reap the Fruit of all my Contrivances, all thoſe Schemes and Stratagems, the Work of above three Years, (a great Space in the Time of a Chancellor) ſee, whether there be the leaſt Mark or Symptom of this *impotent Deſire of Gain!*

1725. 10 Geo. I.

What I did, proves, beyond all Contradiction that I never had any ſuch Views, as theſe they lay to my Charge.

I took not the Advantage I might have done; I took a leſs Sum, when a greater was offered; and * *Part of the Money was returned again* to Mr. *Elde* and Mr. *Thurſton*. And when Mr. *Thurſton's* Money was returned, only for being more than it was expected to be, every Thing was in the ſame State as when it was paid.

* *Which ſhews Self-Conviction.*

And poſſibly your Lordſhips will think, from ſome other Evidence given †, that amaſſing a great Eſtate was never my View; and that rapacious and baſe Ways of getting Money are not conſiſtent with my Way of laying it out.

† *Of his Charities.*

As this is a full Anſwer to the Charge of my Deſire of Gain; and the whole Malignity of all I am charged with, ariſes from that ſuppoſed Principle of my Actions; without this, though there ſhould have been Imprudence, Indolence, too great Confidence, perhaps Credulity, Irreſolution, or any other Defect or Weakneſs, there has been nothing wicked.

And if your Lordſhips are ſatisfied of this one Thing, I apprehend the Sting of this Impeachment is taken out.

To this Defence the Managers replied,

The Reply of the Managers to the Earl's Defence.

The Earl relies upon it, that the whole Charge turns upon *his wicked and corrupt Intent and Views* alledged in the Introduction, which, as he ſays, has not been made appear.

But theſe will be apparent from the Proofs of the ſeveral Facts charged; which, if they are unlawful and unwarrantable, and do tend to the raiſing Money by corrupt and extorſive Meaſures, will manifeſt that Intent, and prove it as ſtrongly as if he had declared his Deſigns in open Court; for ſuch Acts cannot be done with a good and honeſt Intention.

The main Objection againſt the Article is, That there is no Matter of a Criminal Nature contained in the Money Articles; or, if there is a Crime, yet, that there is no Puniſhment annexed or incident to it, which your Lordſhips can now inflict upon the Earl, after he is removed from his Office.

In anſwer to which I ſhall inſiſt, That the Earl's ſelling theſe Offices, or diſpoſing of them for Money, taken by him before the Admiſſion of the ſucceeding Officers, in the manner alledged and proved, is an Offence at the Common Law, and puniſhable by Fine and Impriſonment, upon Indictment, or Information; as well, where the Money was taken for an Admiſſion upon a Reſignation, as upon a Death.

The ancient Law of *England* was, that none having any Office concerning the Adminiſtration of Juſtice, ſhould take any Fee or Reward of any Subject for the doing of his Office, to the End he might be free, and at Liberty to do Juſtice.

And

1725. 10 Geo. I.

And ſeveral Charters of former Kings, and Statutes declaratory of the Common Law, in that Reſpect, have been made, to enforce the due Obſervation thereof.

As to ſuch Offices, which are in the immediate Gift and Diſpoſal of the Crown, they cannot in their own Nature be ſaleable, or diſpoſed of for Money; becauſe the King himſelf cannot be ſuppoſed to ſuffer them to be put to Sale.

And the Miniſters of the Crown, who have no immediate Right in the Office, and are only to execute and confirm the King's Pleaſure in the Diſpoſal of the Office, cannot ſell that which is not their own.

Nor ought, nor can they lawfully take any Fee or Reward, for accepting Reſignations, or making new Grants or Admiſſions into Places, or for conferring inferior Offices, with which they are entruſted by Virtue of their own Office; which would be the taking Money, for the doing of their Office, contrary to the Law, and the before-mentioned Statute.

But there is another very good Act of Parliament, which has been read at your Lordſhips Table, and proves this Practice of ſelling ſuch Offices, to be an Offence at the Common Law, *viz.* the

12 *Rich.* II. c. 2. intituled, *None ſhall obtain Offices by Suit, or for Reward.*

Item, *It is accorded, that the Chancellor*, (by expreſs Name) *Treaſurer, Keeper of the Privy-Seal, Steward of the King's Houſe, the King's Chamberlain, Clerk of the Rolls, the Juſtices of the one Bench, and of the other, Barons of the Exchequer, and all other that ſhall be called to ordain, name, or make Juſtices of the Peace, Sheriffs, Eſcheators, Cuſtomers, Comptrollers, or any other Officer, or Miniſter of the King, ſhall be firmly ſworn, That they ſhall not ordain, name, or make any ſuch Officers, nor other Officer or Miniſter, of the King, for any Gift, or Brocage, Favour or Affection.*

The Act proceeds further into a different Form of Expreſſion, and to another Matter.

Nor, that none which purſueth by him, or any other, privily or openly, to be in any Manner of Office, ſhall be put in the ſame Office, or any other; but that they make all ſuch Officers and Miniſters of the beſt and moſt lawful Men.

This Statute takes it for granted, That the contrary Practice of naming ſubordinate Officers for Gift or Brocage, was unlawful before, at the Common Law; ſince it does not create or enact it to be an Offence, but provides an additional Conſtraint or Obligation upon the ſuperior Officer, by an Oath not to commit the Offence; and it ſtill remains an Offence at the Common Law, and does not depend on that Statute, but is a great Offence, although the Oath be not taken.

Yet, if it ſhould be ſuppoſed, by Way of Argument, (which has not been proved, and therefore cannot be admitted) That the Sale of theſe Offices has been of late tolerated, for the greater Increaſe of the Perquiſites of the firſt Officer of the Crown, in the principal Court of Juſtice; *yet the Earl's raiſing and receiving theſe exorbitant Sums, above double to any Inſtance before his own Time*, upon a Pretence, that the Buſineſs of the Court of *Chancery* was very much advanced during his Reſidence there, will be as criminal, as if he had put the Offices to Auction, when no Sum or Fee had ever been taken or heard of.

1725. 10 Geo. I.

And in his Method of Practice, there can be no Diſtinction between a Preſent and a Price: For he made the moſt always of his Share or Claim in the Office. When he was only to admit upon a Surrender, he took 15000 Guineas for his good Will and Approbation merely: And when he admitted upon a Death, he took 5000 Guineas at the leaſt, although the Office was greatly in Debt; as in *Borret*'s Caſe, where the Suitors will loſe upwards of 12,000 *l.* of their Effects, by the loweſt Computation.

As for the ſmall antient Fees, which have been paid to the Great-Seal for Time immemorial, upon the ſealing every Patent; theſe are out of the preſent Queſtion: And where Uſage, beyond Time of Memory, has allowed the Receipt of theſe little Sums, it will be preſumed, (if there was Occaſion for it) that ſome Act of Parliament had paſſed, to make it lawful.

And, when it is ſaid, That a good Officer may give Money for his Place, and may reſiſt the Temptation of Extortion; it is what the Law of *England* would not truſt to human Frailty: And if all the Actions and Behaviour of the beſt of the Maſters, with Reſpect to their Fees, their Manner of Proceeding upon References, and their diſpoſing and trafficking with the Money of the Suitors, were to be enquired into more particularly; there can be no Doubt, from what has appeared in Evidence upon this Trial, but that the Temptation and Inclination to Profit, towards reimburſing themſelves the Money advanced to the Earl, and the preceding Maſter, have overcome their moſt ſteady Reſolutions to Virtue and Self-Denial.

My Lords, I think the impeached Lord has advanced a very dangerous Poſition upon this Point. He is pleaſed to ſay, The Publick has nothing to do to enquire about any Thing, but whether the Officer be a good Officer; that if he be ſo, the Publick is not hurt, though he gives the Chancellor Money for his Place. Here I preſume he was ſenſible that it might be objected, that the ſame Argument would hold, for taking Money in a Cauſe before him, provided it was a good Judgment: And therefore was pleaſed to ſay, That the Difference between this Caſe, and taking a Bribe for Judgment in a Cauſe, is, that in the one Caſe, the Party has a Right to have Judgment; but in the other Caſe, no Man has a Right to his Favour or Recommendation, unleſs upon Terms. This is very extraordinary; and the ſame Argument would prove, that it is lawful for him to take Money from every Judge that comes into *Weſtminſter-hall*. It is well known, that the Chancellor generally recommends in that Caſe; and yet it might there be ſaid, What is the Publick the worſe, provided he is a good Judge? Surely, this is ſuch a Doctrine

1725. 10 Geo. I.

trine, as is not fit to be proclaimed to the World, and would tend to univerſal Corruption.

As to this Point, there is a great Deal of Difference between one Officer ſelling to another, and a Judge that preſides in the Court, whoſe Duty it is to ſee, that proper Perſons be appointed, according to Law; inſtead of that, by this Method, he ſhews them a bad Example on their very Admiſſion into the Office; and introduces them by Corruption, in the firſt Inſtance, even by the very Act of adminiſtring the Oath to them.

The Year 1720 has been mentioned, both by the Earl, and his Counſel; and it was ſo fatal a Year, that ſurely if a Reformation were ever to be made, it ſhould have been upon that Occaſion. I think there is but little Difference, whether they traded with the Money themſelves, or put it into another's Hands, at high Intereſt, and permitted them to trade with it. Could any one imagine, that *Dormer* let 24,000 *l.* lie in *Wilſon*'s Hands for nothing? Mr. *Cottingham*, upon the Examination of my Lord's own Counſel, gave Evidence, that *Wilſon* inſiſted, he allowed high Intereſt for it: And, it was well known, it was in the Power of all the Maſters to traffick with the Money; and this after expreſs Warning by one of the Maſters, to the Chancellor, not only by Word of Mouth, but by Letter, written (as I take it) in 1722. But every Thing of a Regulation of that Kind was liable to Objection. One Thing that was propoſed, was ſo eaſy to be done, that there is no Excuſe it was not complied with; which is in Relation to the Securities, by placing them in two or three Names; which would have prevented the Maſters from diſpoſing of the Securities.

My Lords, He was pleaſed to make a Diſtinction between an Anſwer to Articles of Impeachment, and an Anſwer to a Bill in *Chancery*; that the Plaintiff, in a Cauſe, had a Right to a full and plain Diſcovery; but that the Caſe before your Lordſhips differs. My Lords, I would beg Leave to mention, that there was an Inſtance of an Impeachment before your Lordſhips, in which the Lord now impeached had a great Share in the Reply, wherein he laid very great Streſs upon the Inſufficiency and Evaſions in the Anſwer *. The Perſon then impeached, had very hard Names given to him on that Account; and even his Silence was inſiſted on, as a Confeſſion of his Crimes.

* *Dr.* Sacheverell.

As to the noble Lord's Charities, I beg leave to ſay, that as it is a great Addition to the Merit of Charity, to have it kept private, it was the more extraordinary theſe Charities ſhould be now publiſhed; becauſe I do not ſee they are any Ways material to the Matters before your Lordſhips. Here are plain Facts charged and proved, and if in a Caſe of this Kind theſe Charities are to wipe off the Charge, it is a Kind of Commutation that has not been before heard of. My Lords, he that would be the moſt meritoriouſly charitable, ſhould firſt be juſt: The Lord ſhould firſt have conſidered thoſe Suitors he had injured; he ſhould firſt have made Satisfaction to them, and then have offered his Gifts.

1725. 10 Geo. I.

Thus we have endeavoured to lay before your Lordſhips the whole Circumſtances of this Caſe; there needs no Eloquence to aggravate the Crimes; I pretend to none; but the Cries of Widows and Orphans will have the moſt perſuaſive Eloquence, and when they have Juſtice on their Side, they will have Weight with your Lordſhips.

My Lords, the Caſe before your Lordſhips is founded on Corruption, and a Series of Fraud to ſupport that Corruption: The People had long murmured at it, but the Grievance increaſed at laſt to ſuch an intolerable Degree, that it became a National Concern, and there was an unavoidable Neceſſity of a Parliamentary Proſecution.

My Lords, the Commons hope they have done their Duty in bringing it here; and we hope your Lordſhips will give ſuch Judgment as will be conſiſtent with your Lordſhips' Honour and Juſtice.

The Arguments being concluded on both Sides, the following Queſtion was put to every Lord, of whom Ninety-three were preſent, *(viz.)*

Is *Thomas* Earl of *Macclesfield* guilty of the High Crimes and Miſdemeanors charged upon him by the Impeachment of the Houſe of Commons, or not guilty?

To which the Lord *Walpole*, the youngeſt Peer, and every other Peer afterwards, anſwered, GUILTY *upon my Honour*. There was not one diſſenting Voice; ſo notorious was the Corruption, and the fatal Conſequences of it, that he had not one Friend or Relation in all that Illuſtrious Aſſembly, that opened his Lips in his Favour.

The Earl convicted.

The Houſe ſitting again on *Wedneſday* the 26th of *May*, the Earl was brought to the Bar, when the Lord Chief Juſtice *King*, then Speaker of the Houſe of Lords, informed him, that the Lords had fully conſidered his Caſe, and had unanimouſly found him GUILTY.

Moves in Mitigation of his Fine.

The Earl thereupon ſaid, he hoped their Lordſhips would conſider what he had ſuffered already, in the Expence he had been at, the Fatigue, and the cruel Diſtemper which his long Attendance had brought upon him; he had paid back ten thouſand eight hundred Pounds of the Money already; he had loſt his Office, and undergone the Cenſure of Parliament, which was of itſelf a very ſevere Puniſhment; and there was not one of the Suitors but had already received five Shillings in the Pounds.

The Managers for the Commons interrupted the Earl here, and ſaid, This might have been proper to have offered in his Defence, but was not ſo in Arreſt of Judgment; their Lordſhips had found him guilty of the Fact, and he was now arguing in Defence of it.

The Earl replied, He ſubmitted it to their Lordſhips, whether this was not proper in Mitigation of Damages; however he left himſelf to their Lordſhips' Juſtice and Mercy.

1725. 10 Geo. I.

Then the Earl and Managers withdrew; and their Lordſhips having ordered the Earl into the Cuſtody of the *Black-Rod*, proceeded to conſider of the Judgment.

On *Thurſday*, the 27th of *May*, 1725, the Commons coming up to the Houſe of Lords, with their Speaker, to demand Judgment, and the Earl being brought to the Bar, the Lord Chief Juſtice *King* pronounced the following Sentence, *(viz.)*

His Sentence. *Their Lordſhips' Judgment is, and this High Court doth adjudge, that you* Thomas *Earl of* Macclesfield *be fined in the Sum of thirty thouſand Pounds to our Sovereign Lord the King; and that you be impriſoned in the* Tower of London *until you ſhall pay the ſaid Fine.*

1725. 10 Geo. I.

Then the Earl was taken from the Bar, and conveyed to the *Tower*, where he remained a Priſoner a ſhort Time, and then paid his Fine, and was diſcharged, and ſeems to have been in full Favour at Court afterwards.

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APPENDIX

Of ſome TRIALS omitted; and of others added ſince the Collection at large.

1554. 1 Mar.

The Arraignment of Sir THOMAS WIAT, for *High-Treaſon*, on the 14th of *March*, 1554. 1 *Mariæ*.

1554. 1 Mar.

Wiat's *Arraignment. The Charge.*

THE Priſoner was indicted for High-Treaſon in levying War againſt the Queen, on the 14th of *February* then laſt paſt, at *Brentford* in the County of *Middleſex*, to which he pleaded Guilty, endeavouring however to extenuate his Crime, and deſiring the Court to interceed for him to the Queen for Mercy.

And Confeſſion.

He ſaid, ſince he had conſidered and reflected on his Offence, he had obſerved, that Rebellion againſt their natural Princes never proſpered long; that *Henry* the IVth was but a Rebel, and the Crown did not continue long in his Family, but was reſtored again to the right Heirs.

He was once indeed of Opinion, that by Marriage of the Prince of *Spain* with the Queen, the Life of the Princeſs *Elizabeth*, the ſecond Perſon in the Kingdom, would be in Danger; and he, who was free born, ſhould have been reduced with his native Country to a State of Slavery by Foreigners, which induced him to practiſe the Treaſon he had committed: But, now he was better informed, and ſenſible how much this Marriage would be for the Honour, Advantage, and Security of the Kingdom, he had altered his Mind; and if Her Majeſty would extend her Grace to him, he would ſerve her faithfully as long as he lived. He then took an Opportunity of reciting what Services he and his Anceſtors had done the Crown.

The Attorney General anſwered, He had great Reaſon to repent of his Faults, for he had not only undone himſelf, but a great many other Gentlemen whom he had deluded into this Rebellion, particularly the Duke of *Suffolk* and his Family, and had attempted to ſeduce the Princeſs, the ſecond Perſon in the Kingdom, whoſe Honour was thereby brought in Queſtion: What did he mean, when the Rebellion firſt broke out, to write to the Princeſs *Elizabeth* to remove farther from the Queen, and after his Succeſs at *Rocheſter* Bridge over the Lord *Norfolk*'s Men to ſend her the joyful News, for which ſhe returned him Thanks?

To which *Wiat* anſwered, He confeſſed it was true. The Maſter of the Horſe then demanded, if when he and Mr. *Cornwallis* were ſent to him from the Queen, he *(Wiat)* did not inſiſt to have the Queen's Perſon in his Cuſtody in the *Tower*, with ſuch of the Privy Council as he ſhould ſpecify, and the publick Treaſure delivered up to him, ſaying, *He had rather be truſted than truſt?*

The Queen's Counſel alſo demanded, if he was not privy to a Conſpiracy to aſſaſſinate the Queen? Though they acknowledged he diſapproved of it: They alſo produced *Wiat*'s Letter to the Duke of *Suffolk*, when he lay with the Rebels in *Southwark*, to meet him at *Kingſton-Bridge*, and ſo march to *London* with him, which *Wiat* acknowledged to be his Hand; he alſo confeſſed, he refuſed to accept the Queen's Pardon when it was firſt offered him; but deſired the Queen's Counſel would not aggravate his Offences, for he had made a full Confeſſion, and thereby ſecured her Majeſty againſt any future Attempts againſt her: He confeſſed, when he had once entered upon that deviliſh and deſperate Enterpriſe, he thought there was no Way but to go through with it: And he took all the Methods he could think of to render it ſucceſsful, ſuch as writing to the Lady *Elizabeth*, and making the Proclamation he had cauſed to be made in *Southwark*; and now, there remained nothing but to throw himſelf upon the Queen's Mercy, though he confeſſed that he deſerved with *Wat Tyler* to be made an Example; and as that was called *Wat Tyler*'s *Rebellion*, this ought to be called *Wiat*'s *Rebellion* to the World's End: However, if the Queen would ſpare him, he would render her the beſt Service he was able; and if ſhe had but two true Men in the Kingdom, he would be one of them, and die at her Grace's Feet, imploring the Lords Commiſſioners again to interceed for him to her Grace, which the

Lords

1554. 1 Mar. Lords promiſed they would do: But his Countenance ſtill remained dejected, and he let fall Floods of Tears, and indeed he had no Manner of Reaſon to expect Mercy, who was at the Head of ſo formidable a Rebellion, wherein he was within a few Hours of ſurprizing the Capital of the Kingdom, with the Queen and Court. 1554. 1 Mar.

He was beheaded the 11th of *April* following.

1615. 13 Jac. I.

Proceedings againſt Sir JOHN HOLLES, Sir JOHN WENTWORTH, and Mr. LUMSDEN, in the *Star-Chamber*, for traducing the publick Juſtice of the Nation, 10 *Nov.* 1615. 13 *Jac.* I.

1615. 13 Jac. I.

Holles, Wentworth, Lumſden.

THE Gentlemen above-mentioned having been committed by Order of Council, and brought before the Court of *Star-Chamber*, the Attorney General, Sir *Francis Bacon*, informed againſt them *Ore tenus:* But before he proceeded to open the Charge, he applauded his Majeſty's Juſtice, in proſecuting the Murderers of Sir *Thomas Overbury*, and not ſparing even the Earl of *Somerſet*, who was, he ſaid, as the Signet upon the King's Right Hand.

Information Ore tenus.

Then he declaimed upon the Crime of Poiſoning, obſerved it was eaſily committed, and as eaſily concealed: That this Fact was the more heinous, as it was practiſed upon a Priſoner who was under the Protection of the Law, and often repeated before it took Effect: That it was a Species of Murder there was no guarding againſt, frequently deſigned againſt one Perſon, and deſtroyed many more; and held, it was not of the Growth of our Country, but came from *Rome*.

However Mr. Attorney does not ſeem to charge any of theſe Gentlemen with having a Hand in that Murder; but endeavouring to ſkreen the Lord *Somerſet* from Juſtice, by queſtioning *Weſton*'s Guilt, and reflecting on the Judges, as if they had perverted Juſtice, and extorted that Confeſſion from *Weſton*.

Then he charges Mr. *Lumſden* with getting a Paper put into the King's Hands, reflecting on the Chief Juſtice and Commiſſioners, authorized by his Majeſty to enquire into *Overbury*'s Murder: Sir *John Wentworth* he charges with putting Queſtions to *Weſton* at the Place of Execution, tending to make the People believe he was innocent, and charges Sir *John Holles* with adviſing *Weſton* to diſcharge a good Conſcience, with the like Intent: That Sir *John Holles* alſo ſaid, If he had been upon *Weſton*'s Jury, he doubted whether he ſhould have found him guilty; or to that Effect: And Mr. Attorney inſiſted, that it was criminal to arraign and calumniate either the Court or the Jury, for trying or convicting a Malefactor; eſpecially in this Caſe, where *Weſton* had ſent for both the Father and Mother of Sir *Thomas Overbury*, confeſſed his Guilt, and asked their Pardon: But ſtill theſe Gentlemen pretended to doubt if he was guilty, and endeavoured to make the World believe he was innocent.

Lumſden's *Defence.*

Mr. *Lumſden* ſaid in Anſwer to this Charge, that he was not at *Weſton*'s Arraignment, but had ſet down in Writing what he heard from others in common Diſcourſe, who now denied what they had ſaid; and therefore he confeſſed what he had written was falſe; urged his Ignorance in the Law of *England*, and ſaid he had no ill Intent; but deſired as he was a Gentleman, he might be excuſed from diſcovering the Perſons that ſaid theſe Things to him in Converſation, ſubmitting himſelf to the Cenſure of the Court.

To which Mr. Attorney replied, That he who refuſed to declare his Author, muſt be looked on as the Forger of the Slander.

Went-worth's *Defence.*

Sir *John Wentworth* confeſſed, he asked *Weſton* the Queſtions at the Execution with which he was charged, which he endeavoured to excuſe. 1. Becauſe others had done the ſame. 2. Becauſe he had heard *Weſton* denied the Fact, and deſired to know the Truth of it from himſelf; and if the asking a Man Queſtions who was going to Execution were offenſive to the State, he ſubmitted to the Court.

Holles's *Defence.*

Sir *John Holles* in his Defence ſaid, he confeſſed he had ſaid he ſhould have been in Doubt what Verdict to have given, or to that Effect; and if ſuch Words deſerve Cenſure, he ſubmitted to their Lordſhips: He confeſſed alſo, that ſome bidding *Weſton* ſpeak the Truth, and he anſwering generally *Fact or no Fact I die worthily.* He (Sir *John Holles*) did bid him *ſpeak his Conſcience*, in which he thought he did the Part of a Chriſtian, and intended neither to reflect on the Law, or Juſtice that had paſſed on him.

Here he mentioned his having ſerved Prince *Henry*, and lamented his Death; and ſaid, if their Lordſhips had determined any Thing againſt him, he humbly ſubmitted to their Cenſures.

Sir Edw. Coke's *Speech to the Defendants.*

Then the Lord Chief Juſtice, Sir *Edward Coke*, made a Speech to the Defendants before he pronounced Sentence: Wherein he ſaid, That none were brought in Queſtion for poiſoning Sir *Thomas Overbury*, but ſuch as in his Soul and Conſcience were apparently guilty; and obſerved, there were but few Inſtances in our Records, of this Crime committed in *England:* But one he mentioned in the Reign of *Edw.* I. where a Woman committed Adultery, and afterwards poiſoned her Husband; and that other of *Solomon le Rocke*, a Judge, who was poiſoned by a Monk; and obſerved upon the firſt Caſe, that Poiſon and Adultery go together; and upon the laſt, that Poiſon and Popery go together. But from the Reign of *Edw.* III. to that of *Hen.* VIII. he obſerved, there was no Account of any Man's being poiſoned in *England*; and then a Statute was made that a Poiſoner ſhould be boiled to Death: Another Caſe he remembered afterwards, of one *Squire* a Prieſt, who endeavoured

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voured to poiſon Queen *Elizabeth*'s Saddle; and obſerved again, that Poiſoning came firſt from Popery: He added, that the Reaſon *Weſton* denied the Fact laid in the Indictment was, becauſe he could not ſay which of the Poiſons adminiſtered to Sir *Thomas* killed him; but when he was informed that was not material, he made no Scruple to confeſs the Indictment: Then the Chief Juſtice told Mr. *Lumſden* that he was Pander to the Earl of *Somerſet*, and his Favourer, as appeared by his Letter; and reflected ſeverely on him for endeavouring to conceal the Crimes the Earl of *Somerſet* and his Lady were ſo violently ſuſpected of.

The Crimes of *John Holles* alſo he ſaid he looked upon to be very great, in queſtioning and conſelling others after a Verdict given: Nor was he pleaſed with what he ſaid at the Bar, *viz*, *If any Thing were determined againſt him, he humbly ſubmitted himſelf*, as if they were in a Conſpiracy againſt him: But perhaps he thought as ſome others did, that the whole Proſecution was but a Conſpiracy againſt the Earl of *Somerſet*, and adviſed Gentlemen to ſpeak reverently of theſe Matters, when they diſcourſed of them in their Chambers, for the Birds of the Air would reveal the Matter: After which, the following Sentence was pronounced, *viz.*

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The Sentence.

That *Lumſden* ſhould pay a Fine of 2000 Marks, be impriſoned for a Year, and until the Fine was paid, and till he ſhould ſubmit himſelf at the *King's-Bench* Bar, and declare his Authors.

That Sir *John Holles* ſhould pay a Fine of 1000 *l.* and be impriſoned in the *Tower* for a Year, And

That Sir *John Wentworth* ſhould pay a Fine of 1000 Marks, and be impriſoned in the *Tower* for a Year; and that both of them ſhould make their Submiſſion at the *King's-Bench* Bar.

Lords preſent.

The Lords of the *Star-Chamber* preſent were, The Archbiſhop of *Canterbury*, Lord Chamberlain, Earl of *Pembroke*, the Biſhops of *London* and *Winton*, Lord *Zouch*, Lord *Knowles*, Mr. Secretary *Winwood*, the Chancellor of the Dutchy, Sir *Thomas Lake*, the two Chief Juſtices, and the Lord Chief Baron.

1645. 21 Car. I.

Spotſwood's *Trial.*

The Mock Trial of Sir ROBERT SPOTSWOOD, Secretary of State to King *Charles* I. for pretended Treaſons, before an Aſſembly of the Uſurpers in *Scotland*, who aſſumed the Name of a Parliament there in *November*, *December*, and *January* 1645, 21 *Car.* I.

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The Charge.

THE Dittay, or Indictment, charges Sir *Robert* with abuſing His Majeſty, in purchaſing of him the Office of Secretary of the Kingdom of *Scotland*, and putting the Signet to ſeveral Commiſſions granted to *James Graham* Earl of *Montroſe*, whom their Kirk had excommunicated, and they had declared a Traitor; particularly to a Commiſſion dated the 5th of *June* 1645, conſtituting the ſaid Earl Lieutenant-Governor, and Captain-General of all the Forces of that Kingdom, againſt the Forces raiſed by the Authority of the Eſtates of Parliament in Defence of the ſolemn League and Covenant; and ſigning another Commiſſion, conſtituting the ſaid Earl Commiſſioner to the Parliament; and to a Proclamation, annulling and condemning the Proceedings of this pretended Parliament as Treaſonable. He is alſo charged with joining the ſaid Earl's Forces, and committing divers Acts of Hoſtility, till the Earl was defeated on the 13th of *September* then laſt paſt, when the ſaid Sir *Robert Spotſwood* was taken Priſoner: And they declare that his taking up Arms in this Manner was High Treaſon, by an Act made in the Year 1644; for which he ought to ſuffer the Pains of Death, *&c.* as a Traitor.

His Anſwer to the Charge.

To this Charge Sir *Robert* anſwered, That the King had made him a Temporary Secretary in the Abſence of the Earl of *Lanerk*, and that he held it his Duty to ſign ſuch Commiſſions and Acts of State as his Majeſty commanded: That his accompanying the Earl of *Montroſe*, who had the King's Commiſſion, could not be interpreted a taking up Arms againſt the Kingdom: And laſtly, That he was not charged with any thing that was declared Treaſon by Act of Parliament, or any other Law.

The Uſurpers reply.

The Counſel for the Uſurpers replied, That it was Criminal to accept any Office without the Conſent of the Eſtates in Parliament: And that his ſigning the ſaid Commiſſion was a Proof that he was Guilty of adviſing the King to iſſue the ſaid Commiſſions, and other Acts of State againſt them. That his joining the Earl of *Montroſe* was a taking up Arms againſt his Country; and by an Act of Parliament, made in the Year 1584, the impugning the Authority of the Eſtates of Parliament was declared to be High Treaſon.

Sir Robert rejoins.

Sir *Robert*'s Counſel rejoined and ſaid, That the accepting an Office without the Conſent of Parliament was not ſuch an impugning of their Authority as amounted to High Treaſon; and that he only ſupplied the Place of Secretary for a Time, in the Abſence of the real Secretary: That it could not be inferred from his ſigning the Commiſſions that he adviſed them; for many of thoſe who are appointed to ſign Papers are not of the Council; and they would be looked upon as Intruders if they offered their Advice: That he happened accidentally into the Earl of *Montroſe*'s Army, and was not in Arms, or had any Intention to march with him on any hoſtile Expedition; though he acknowledged he was taken Priſoner in that Battel: That the late Act of Parliament of 1644, on which they charged him with Treaſon, was not made as others were, by his Majeſty and the States jointly, but dur-

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ing a Diviſion between His Majeſty and His Subjects, who were in Arms againſt him, as they acknowledged; and in ſuch fatal Conjunctures, Neceſſity compels all Men to take one Side or other. There was no expreſs Law directing private Men how they ſhould behave in ſuch Exigences; and it had ever been thought excuſable for Men to follow the Light of their own Conſcience and Judgments, although they might be miſtaken. That he ought to enjoy the Privileges of the Laws of War and of Nations, among which one of the Principal was, That Men ſhould not be judged by the Laws of thoſe againſt whom they had ſided, eſpecially by ſuch Laws as were made during the Conteſt. And he further inſiſted, That he was promiſed Quarter upon his ſurrendering himſelf.

The Uſurpers further reply. The Counſel for the Uſurpers anſwered, That Sir *Robert* had not only joined the Earl of *Montroſe*, who had been declared a Rebel and Enemy to his Country, but who was an Enemy to their Religion, and the Solemn League and Covenant. Nor was it in the Power of any Officer of the Army to give Quarter, and thereby protect a Rebel againſt the State: That the Eſtates of Parliament, in order to avert God's Wrath, were bound by the Covenant to puniſh the Enemies of their Religion; and if Quarter was to be allowed to other Priſoners, yet not to him, who was declared unpardonable, by the Parliaments both of *Scotland* and *England*.

Sir Robert's *further Anſwer.* The Priſoner's Counſel replied, That whoever were taken in the Field, upon Quarter granted them, had a Right to their Lives by the Laws of War, and of all Nations; eſpecially as his Caſe was, who was taken by an Officer belonging to a Nobleman of great Honour and Eminence, both in the State and in the Army; and if quarter ſhould be denied where it was promiſed, this would open a Door to all manner of Cruelty; and that the Covenant could not oblige them to do what was unjuſt, or contrary to the Laws of War or of Nations.

That though it had been declared in Parliament he was to expect no Pardon, this did not exclude him from the Benefit of Quarter already granted, for ſecuring his Life.

The Committee having heard the Arguments and Evidence on both Sides, made their Report to the Parliament, who thereupon declared, Sir *Robert Spotſwood* had incurred the Capital Puniſhment of Death, by the Act of Parliament of 1584, and that he had incurred the Pain and Puniſhment of Treaſon, and Forfeiture of Lands and Goods, by the ſaid Act, made in the Year 1644; and therefore condemned him, as a Traitor to the Kingdom, and the Eſtates thereof, to forfeit Life, Lands and Goods, to be applied to the Uſe of the Publick; and that he ſhould be executed, by ſtriking off his Head from his Shoulders, at the Market Croſs at St *Andrews*, on *Thurſday* the 20th of that Inſtant *January*.

He is declared guilty,

and condemned.

In Purſuance of which Sentence, Sir *Robert* being brought to the Place of Execution, was about to make a Speech to the People, when a zealous Miniſter of the Kirk required the Provoſt to ſilence him. Sir *Robert* having foreſeen this, threw a Paper among the People of the following Tenour, *(viz.)*

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The Paper he left behind him.

YE will expect ſomewhat from me of the Cauſe for which I am brought here at this Time to ſuffer in this kind, which I am bound to do, for clearing the Integrity of my own Proceeding, vindicating his Majeſty's juſt and pious Intentions, and withal, to vindicate you that are miſled in Ignorance, and made to believe, that you are tied in Conſcience to ſet forward this unnatural Rebellion, masked under the Covert and Pretext of propagating Religion, and maintaining of the publick Liberties. You perceive that I ſtand here adjudged to die, by this pretended Parliament, as a Traitor to the Eſtates, and an Enemy to my Native Country. This is a Treaſon unheard of before in this Kingdom, againſt the Eſtates; a Thing of late Creation, which, I believe, there be ſome would have erected, in Oppoſition to the juſt and lawful Authority of the King, under which we and our Predeceſſors have been ſo many hundred of Years governed. To come to my treaſonable Demeanour (as they eſteem it) the main one is, That I did docquet and bring down a Commiſſion of Lieutenantry from his Majeſty to the Marquis of *Montroſe*, with a Proclamation for indicting a Parliament by the King's Authority, wherein the ſaid Lord Marquis was to be Commiſſioner. Not to excuſe my ſelf upon the Neceſſity laid upon me to obey His Majeſty's Command in a Buſineſs of that Nature in regard of the Charge I had about him, I cannot ſo far betray my own Conſcience, as to keep up from you my Judgment of the Thing it ſelf, ſeeing it may tend to the juſtifying the King's Part, and your better Information; for lack whereof, I know many are entangled in this Rebellion unwittingly: And who knoweth, but God in his merciful Providence hath brought us hither, to be Inſtruments of freeing you. from the manifold Deluſions that are made uſe of to enſnare you. I ſay then, it was juſt and neceſſary to His Majeſty to grant ſuch Commiſſions, and by Conſequence an Act of Duty in me to perform what he was pleaſed to command me. It is known what contentment His Majeſty gave to this Kingdom at his laſt being here, both in the Affairs of Church and Policy; notwithſtanding whereof, the World ſeeth what Meeting he hath got from us. When the Rebellion burſt forth in *England*, all that he deſired of us was, to ſtand neutral, and not to meddle between him and his Subjects there, of which moderate Deſire of his little Reckoning was made; but on the contrary, at the Requeſt of theſe Rebels, by the Power of their Faction amongſt us, an Army was raiſed and ſent to *England* to aſſiſt them againſt our own Native King: His Majeſty being reduced to this extremity, what Expedient could he find ſo fair and eaſy, as to make uſe of the Help of ſuch of his Loyal Subjects here, as he knew had ſuch an unparalleled Diſloyalty in Horror and Deteſtation? Amongſt whom, that matchleſs Mirrour of all true Worth and Nobility, the Lord Marquis of *Montroſs* having offered himſelf, it pleaſed

His

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His Majeſty to give him a ſubaltern Commiſſion at firſt, which he having executed with ſuch unheard of Succeſs, that his Memory ſhall be had in Honour for it in all Ages: His Majeſty for the better furthering of his own Service, and to countenance and encourage him the more in it, gave him an abſolute and independent one thereafter, which is That I delivered into his Hands by His Majeſty's Command. Herewithal His Majeſty pitying the Miſery of this poor Kingdom, occaſioned by the rebellious Stubbornneſs of a few factious Spirits, thought fit to give Power to the ſaid Lord Marquis to call a Parliament in His Majeſty's Name, to try if by that Means a Remedy might be found againſt the preſent Evils, and to have all his Subjects of this Kingdom reduced, by one Means or other, under his Obedience. In all this, I ſee not what can be juſtly charged upon His Majeſty, or upon me his Servant, who have done nothing againſt any authorized Law in the Kingdom; but have ſerved him faithfully, unto whom by Truſt and natural Allegiance I am ſo much bound.

Whereas I am declared an Enemy to my Native Country, God be ſo propitious to me, as my Thoughts towards it have been always Publick, and tending to the Good and Honour thereof. I do profeſs, ſince the firſt Time I had the Honour of that Noble Marquis's Acquaintance, I have been a Favourer of his Deſigns, knowing them to be both Loyal and Honourable: Beſide that, I knew his Affection towards his Country to be eminent, in this eſpecially, that he did ever ſhow himſelf Paſſionate to vindicate the Honour of this Kingdom, which ſuffereth every where by this ſtrange Combination of theirs with the Rebels of another Kingdom againſt their own Prince; wherein I concurred in Judgment with him, and thought there was no other Way to do it, but by ſetting up a Party of true and Loyal hearted *Scots-men* for His Majeſty; whereby it might be ſeen, that it is not a National Defection, but only ſtirred up by a Faction therein, who, for their own Ends, have diſhonoured their Native Kingdom, and diſturbed the Peace thereof. In enterprizing and proſecuting of which heroical Deſign, God hath ſo favoured that Noble Lord, that he hath righted our Country in the Opinion of all the World, and diſcovered where the Rottenneſs lieth.

Thus far I am content to be accounted a Traitor in their Opinion that have condemned me, being fully aſſured, that God, the righteous Judge of all, who knoweth the Uprightneſs and Integrity of my Intentions, will impute no Fault to me in this kind, ſince to my Knowledge I have carried my ſelf according to the Direction of his Word, and the Practice of all good Chriſtians, before theſe miſerable Times we are fallen into. My Exhortation therefore (which coming from one at the Point I am at, will, I hope, have ſome Weight) ſhall be this unto you, That you will break off your Sins by Repentance, and above all, free yourſelf of this Maſter Sin of Rebellion that reigneth in this Land; whereunto moſt Part are either forced or drawn away unawares, chiefly at the Inſtigation of thoſe who ſhould direct you in the Way of Truth. It cannot be but a great Judgment upon a Land, when God's ſingular Mercies towards it are ſo little valued: He hath not given us a King in his Wrath, but one for Piety, Bounty, and all Virtues, both Chriſtian and Moral, may be a Pattern to all Princes beſides.

1645. 21 Car. I.

How thankful we are to God for ſo great a Bleſſing, our Reſpect towards him manifeſteth: Yet I fear, there is a greater Judgment than this upon it, which occaſioneth all the Miſchiefs that afflict this poor Land, ſuch as was ſent upon *Ahab:* God hath put a lying Spirit in the Mouths of the moſt Part of your Prophets, who, inſtead of the Doctrine of Salvation, labour to draw your Hearts unto the Condemnation of *Core.* God Almighty look upon this poor miſerable Church and Kingdom, and relieve you out of the intolerable Servitude you lie under, which I do heartily wiſh for in your Behalf! So let me have the Aſſiſtance of all your Prayers, that God would be pleaſed to pardon all my Sins in Jeſus Chriſt, and gather my Soul with the Saints and Martyrs, that are gone to their Reſt before. So I bid the World and you Farewell.

Sir *Robert* was not diſturbed at the unmannerly Interruption he met with, when he was about to addreſs himſelf to the People; but turning from them, he wholly applied himſelf to his Devotions and Prayers to Almighty God. The ſame Miniſter then asked, if he would have him and the People to pray for the Salvation of his Soul? He made Anſwer, That he deſired the Prayers of the People, but was not ſollicitous for his Prayers, which he believed were abominable to God; for (added he) of all the Plagues with which the offended Majeſty of God had ſcourged this Nation, this was much the greateſt, (greater than the Sword, Fire, or Peſtilence) that for the Sins of the People, God had ſent a *lying Spirit in the Mouth of the Prophets.* With which Saying, this Preacher finding himſelf touched, fell into ſuch a Paſſion, that he could not forbear ſcandalous and contumelious Language againſt Sir *Robert*'s Father, who had been long dead, and againſt himſelf, who was now dying; which this Gentleman took no Notice of, having his Mind fixed upon higher Matters. At laſt, with an undaunted Air, he advanced towards the Inſtrument of his Execution, and ſhewing no Alteration, either in Voice or Countenance, he laid down his Neck to the fatal Stroke, and uttered theſe his laſt Words, *Merciful Jeſu, gather my Soul unto thy Saints and Martyrs, who have run before me in this Race!*

All the Remarks I ſhall make on this Piece of Injuſtice and Tyranny are, That, when Uſurpers are ſucceſsful, the beſt and greateſt Men are treated as Malefactors, and the Laws that were made for the Protection of the People, are wreſted to their Deſtruction; and that no Tyrants are more inſupportable than thoſe who are animated by a blind Zeal for a falſe Religion.

The

1662. 14 Car. II. Crook's Trial.

The Trial of JOHN CROOK, ISAAC GREY, and JOHN BOLTON, Quakers, for not taking the Oaths, at the *Old-Baily*, *London*, on the 25th of *June* 1662. 14 Car. II.

1662. 14 Car. II.

A partial Narrative of the Quakers.

THIS is denominated a Trial in Conformity with the Editors of the 5th and 6th Volumes of Trials, who were pleased to call it so; but nothing discovers the Negligence or want of Judgment in those that made that Collection, more than the binding up such partial Narratives of the Parties themselves among the State Trials: It consists chiefly of insolent Invectives against the Administration and Courts of Justice, and Complaints of their being disturbed at one of their Conventicles, when the Laws prohibited such Meetings: Of their being had before a Justice of Peace, then to the Sessions of *Hicks*'s-*Hall*, and afterwards before the Court of Goal-Delivery at the *Old-Baily*, where the Oaths being twice tendered them, were as often refused, notwithstanding the Court informed them, that by a second Refusal they incurred a *Premunire*.

They were then indicted on the 3 *Jac.* for not taking the Oaths, and being arraigned, refused to plead for some Time; but at length they pleaded Not Guilty, and Witnesses being produced to prove their Refusal of the Oaths, they cryed out, That Christ's Commands to his Followers were, *Swear not at all*, and were so noisy and scurrilous, that the Court was compelled to order their Mouths to be stopped: At length, the Jury having brought them in Guilty, the Recorder read a Paper, importing, That the Jury having convicted them of not taking the Oaths they had incurred a *Premunire*, *Which was a Forfeiture of all their real Estates for Life, and of their Personal Estates for ever, put them out of the King's Protection, and made them liable to be imprisoned during Pleasure*; and this was their Sentence: To which *Crook* answered, *We are still under God's Protection.*

They are convicted,

and sentenced to have incurred a Premunire;

But the Brethren neglect to do the Government that Justice to declare, the Crown did not take the Forfeitures they had incurred, but was more merciful to them than their insolent Behaviour deserved.

But the Sentence not executed.

1675. 27 Car. II.

Proceedings of the House of Lords and Commons in relation to their respective Privileges in the Case of CRISPE and DALMAHOY. *Anno* 1675. 27. *Car.* II.

1675. 27 Car. II.

Vote of the Commons.

THE House of Commons Resolved the same Sessions, in the Case of *Shirley* and *Fagg*, *That whoever should appear at the Bar of the House of Lords to prosecute a Suit against any Member of the Commons, during the Session and Privilege of Parliament, should be deemed a Breaker and Infringer of the Rights and Privileges of that House: And that it was the undoubted Right of the Commons, That none of their Members be summoned to attend the House of Lords, during the Sitting or Privilege of Parliament.*

And *Crispe* and others, having appealed to the House of Lords against a Decree in *Chancery*, made in Favour of Mr. *Dalmahoy*, a Member of the Commons, and others, the Lords ordered the Cause to be heard on the 28th of *May* 1675, and Sir *John Churchill*, Mr. Serjeant *Peck*, Mr. Serjeant *Pemberton*, and Mr. *Porter*, were assigned Counsel for *Crispe*, *&c.* by the Lords, and the Cause being accordingly heard at the Lords Bar on the 28th of *May*, the Petition and Decree were dismissed.

Whereupon the said Counsel were ordered to attend the House of Commons, and being called in and examined concerning their appearing at the Lords Bar, notwithstanding the aboveſaid Resolutions of the Commons, the Counsel answered, That they had no Notice of the Order or Vote of the House, but what they had heard in common Discourse; and being assigned Counsel for the *Crispe* by the Lords, and Mr. *Dalmahoy* putting in his Answer, and not insisting on his Privilege, they conceived, they might safely appear as Counsel, without Breach of the Commons Order, or invading the Rights or Privileges of the House, which they never intended.

But the Counsel being withdrawn, the Commons ordered them to be taken into Custody of the Serjeant at Arms.

Serjeant Pemberton, *and three Lawyers more, taken into Custody by the Commons.*

A Committee of Lords afterwards, at a Conference with the Commons on the 3d of *June*, took Notice, that the Commons had ordered into the Custody of their Serjeant, Mr. Serjeant *Peck*, Sir *John Churchill*, Mr. Serjeant *Pemberton*, and Mr. Serjeant *Porter*, Counsellors at Law, assigned by their Lordships to be of Counsel, in an Appeal heard at their Lordships Bar in the Case of Sir *Nicholas Crispe*, against the Lady *Bowyer*, Mr. *Dalmahoy* and others; and insisted, that the Jurisdiction of the Lords in Parliament, where his Majesty is highest in his Royal Estate, and where the last Resort of judging upon Writs of Error, and Appeals of Equity in all Causes, and over all Persons, is undoubtedly fixed, and permanently lodged.

Resolutions of the Lords communicated at a Conference.

It is an unexampled Usurpation and Breach of Privilege against the House of Peers, that their Orders or Judgments should be disputed, or endeavoured to be controuled, or the Execution thereof obstructed by the lower House of Parliament, who are no Court, nor have Authority to administer an Oath, or give any Judgment.

It

1675. 27 Car. II.

It is a tranſcendent Invaſion on the Right and Liberty of the Subject, and again *Magna Charta*, the Petition of Right, and many other Laws which have provided, That no Freeman ſhall be impriſoned, or otherwiſe reſtrained of his Liberty, but by due Proceſs of Law.

This tends to the Subverſion of the Government of this Kingdom, and to the introducing of Arbitrarineſs and Diſorder:

Becauſe it is in the Nature of an Injunction from the lower Houſe, (who have no Authority or Power of Judicature over inferior Subjects, much leſs over the King and Lords) againſt the Orders and Judgments of the Supreme Court.

We are further commanded to acquaint you, That the Lords have therefore, out of that Juſtice which they are Diſpenſers of againſt Oppreſſion and Breach of Laws, by Judgment of this Court, ſet at Liberty by the Gentleman-Uſher of the Black-Rod, all the ſaid Serjeants and Counſellors, and prohibited the Lieutenant of the *Tower*, and all other Keepers of Priſons, and Goalers, and all Perſons whatſoever, from arreſting and impriſoning, detaining, or otherwiſe moleſting, or charging the ſaid Gentlemen, or any of them in this Caſe: And if any Perſon of what Degree ſoever ſhall preſume to the contrary, their Lordſhips ſhall exerciſe the Authority with them intruſted, for putting the Laws in Execution.

Proceedings of the Commons thereupon.

The Commons, notwithſtanding, ordered their Serjeant to go into the Courts of *Weſtminſter-hall* and take the ſaid Counſellors into Cuſtody again; and the Serjeant intimating he had obeyed the Order, they were committed to the *Tower* by the Speaker's Warrant: And it was ordered, that *John Popham*, Eſq; their Serjeant at Arms, ſhould be protected againſt all Perſons who ſhould moleſt him in the Execution of his Office.

And at a future Conference with the Lords, the Commons declared, they were ſurprized their Lordſhips ſhould aſſume a Power to judge the Orders of the Houſe of Commons for Impriſonment of Mr. Serjeant *Pemberton*, Mr. Serjeant *Peck*, Sir *John Churchill*, and Mr. *Charles Porter*, to be illegal and arbitrary, and the Execution thereof, a great Indignity to the King's Majeſty; with many other high Reflections upon the Houſe of Commons throughout the whole Conference, whereby your Lordſhips have condemned the whole Houſe of Commons as Criminal, which is without Precedent or Example, or any Ground or Reaſon ſo to do.

It is not againſt the King's Dignity, for the Houſe of Commons to puniſh by Impriſonment a Commoner that is guilty of violating their Privileges, that being according to the known Laws and Cuſtoms of Parliament, and the Right of their Privileges declared by the King's Royal Predeceſſors in former Parliaments, and by Himſelf in this.

But your Lordſhips claiming to be the Supreme Court, and that his Majeſty is higheſt in his Royal Eſtate in the Court of Judicature, there is a Diminution of the Dignity of the King, who is higheſt in his Royal Eſtate in full Parliament, and is derogatory to the Authority of the whole Parliament, by appropriating it to your ſelves.

1675. 27 Car. II.

The Commons did not by this Impriſonment infringe any Privileges of the Houſe of Peers, but only defend and maintain their own: On the other Side, your Lordſhips do highly intrench upon the Rights and Privileges of the Houſe of Commons, by denying them to be a Court, or to have any Authority or Power of Judicature; which, if admitted, will leave them without any Power or Authority to preſerve themſelves. As to what your Lordſhips call a tranſcendent Invaſion of the Rights and Liberty of the Subject, and againſt *Magna Charta*, *the Petition of Right*, and many other Laws; the Houſe of Commons preſume that your Lordſhips know that neither the Great Charter, Petition of Right, or any other Laws, do take away the Law and Cuſtom of Parliament, or of either Houſe of Parliament; or elſe your Lordſhips have much forgotten the Great Charter, and thoſe other Laws, in the ſeveral Judgments your Lordſhips have paſſed upon the King's Subjects in Caſes of Privilege. But the Commons cannot find by *Magna Charta*, or by any other Law or ancient Cuſtom of Parliament, that your Lordſhips have any Juriſdiction in Caſes of Appeals from the Courts of Equity.

We are further commanded to acquaint you, That the Enlargement of thoſe Perſons in Priſon by Order of the Houſe of Commons, by the Gentleman-Uſher of the Black Rod, and the Prohibition which threatens all Officers and other Perſons whatſoever not to receive or detain them, is an apparent Breach of the Rights and Privileges of the Houſe of Commons: And they have therefore cauſed them to be re-taken into the Cuſtody of the Serjeant at Arms attending this Houſe, and have committed them to the *Tower*.

The Houſes proceeding to theſe Extreams, the King ordered them to attend him at *Whitehall*, on the 5th of *June*, when he told them, He was not to ſuffer theſe Differences to grow to Diſorders in the whole Kingdom, if he could prevent it; and while they were debating about their Privileges, to ſuffer his own to be invaded.

The Lords then preſented an Addreſs to his Majeſty, to remove the Lieutenant of the *Tower* for receiving the Lawyers into his Cuſtody, that were committed by the Commons; but his Majeſty anſwered, He did not ſee how he could in Juſtice remove him.

Afterwards the two Houſes proceeded in their Debates on the Caſe of *Shirley* and *Fagg*, being of the ſame Nature, and already recited in this Work: And the King, perceiving there was no Likelihood of their accommodating their Differences, prorogued the Parliament, whereby the Lawyers obtained their Liberty.

1681. 33 Car. II.

Lord Maitland's *Trial.*

The Trial of CHARLES MAITLAND, Lord *Halton*, Lord Treaſurer Depute, for *Perjury*, at *Edinburgh*, before the Lords of the Articles, (a Committee of Parliament which prepares Buſineſs for the Houſe) in *July* and *Auguſt*, 1681. 33 *Car.* II.

1681. 33 Car. II.

The Charge.

THE Petition or Charge preferred by Mr. *W. Noble* to his Royal Highneſs the Duke of *York*, High Commiſſioner to the Parliament of *Scotland*, and the Lords of the Articles, againſt the Lord Treaſurer Depute, was of the following Tenor, *(viz.)*

That whereas *James Mitchel*, deceaſed, being brought upon his Trial for attempting to aſſaſſinate the Archbiſhop of St. *Andrew*'s, and his Confeſſion before the Duke of *Lauderdale*, his Majeſty's High Commiſſioner, being produced as Evidence againſt him, the ſaid *Mitchel* in his Defence had affirmed, that his ſaid Confeſſion was made upon an Aſſurance given him of his Life, and called the ſaid *Charles* Lord *Maitland*, Lord Treaſurer Depute, as a Witneſs to prove it, who teſtified, *That no Promiſe or Aſſurance of Life was given to the ſaid* Mitchel, notwithſtanding the ſaid Lord *Maitland*, by Letters under his Hand, had expreſly wrote to the late Earl of *Kincardine*, *That the ſaid* Mitchel *had confeſſed, on Aſſurance of Life made to him.* Whereupon it was prayed, That the ſaid Lord *Maitland*, Lord Treaſurer Depute, might be declared infamous, and ſuffer ſuch other Pains as were appointed by Law in ſuch Caſes.

The Anſwer.

To this Charge the Lord Deputy anſwered, That to denominate it Perjury there ought to be two contradictory Oaths, whereas here is only an Oath ſaid to be made four Years ago contradicting his Letters, which could not infer Perjury, but only an Error or Miſtake in the Letters: That when he was convinced that he had been miſtaken in his Letters, and was called to give Evidence of the Matter afterwards, it was his Duty to teſtify, according to his Knowledge and the Truth, though it contradicted his Letters, which only contained an indigeſted Account of News.

He anſwered further, That the Oath and the Letters were conſiſtent, for *Mitchel* at firſt denied the Fact before the Council, though he afterwards confeſſed it privately to the Chancellor when he was withdrawn; and it was generally reported, till the Chancellor teſtified the contrary, that he had made that Confeſſion upon an Aſſurance of Life, which was a ſufficient Foundation for a Letter of News: But when he came to give Evidence, he could not teſtify *he heard* any ſuch Confeſſion, that being made in private before the Chancellor (if there was any made) and not before the Council, as the Letters themſelves imported: From all which he obſerves, It was evident that the Charge was an unjuſt Calumny, and a ſcandalous Libel; and prays that he may be vindicated and aſſoiled from it, and the Calumniator be puniſhed and declared infamous, according to the Demerit of his Crime.

Lord Maitland *acquitted.*

The Lords of the Articles having conſidered the Matter, declared the Lord Treaſurer Depute to be innocent, deſiring his Royal Highneſs, the High Commiſſioner, to lay the whole Affair before his Majeſty, that the Treaſurer might be vindicated, and the Author puniſhed.

1684. 36 Car. II.

The Trial between Neal *and* Ivy.

A Trial in Ejectment between THOMAS NEAL, Eſq; Leſſor of the Plaintiff, and the Lady IVY, Defendant, in the Court of *King's-Bench*, in *Trinity-Term*, 1684. 36 *Car.* II.

1684. 36 Car. II.

The Caſe.

THE Caſe was this: Mr. *Neale*, the Leſſor of the Plaintiff, claimed ſeven Acres of Land in *Shadwell*, as Leſſee, of the Dean and Chapter of St. *Paul*'s, who had the Inheritance of thoſe Lands; and the Defendant, the Lady *Ivy* claimed the ſame Lands as Part of *Wapping Marſh*, which had been dreined by one *Vander-Delf*, a *Dutchman*, who had one half of that Marſh, by Act of Parliament, conferred on him and his Heirs as a Reward for that Service. And one *Stephens* had purchaſed theſe Lands of the *Dutchman*, under whom the Lady *Ivy* endeavoured to make out her Title.

The ſole Queſtion was, Whether theſe Lands were Part of *Wapping Marſh*, or Part of the Dean and Chapters Eſtate in *Shadwell?* And it appearing that the Lady *Ivy* had forged ſeveral Deeds to ſupport her Pretenſions, *Neale*, the Plaintiff, obtained a Verdict: Whereupon an Information of Forgery was preferred againſt the Lady: But whether there were any Proceedings upon it does not appear.

This being a pure Civil Cauſe, and only the Trial of a Matter of Fact, which has no Relation to the State, and very little Law in it, I believe the Reader will be better ſatisfied with this ſhort Abſtract than if I had given him the forty Folio Pages it takes up in the Collection of Trials. It is evident to me, that this was put in by the Direction of the Bookſellers, purely to encreaſe the Bulk, and enhance the Price of the laſt two Volumes, there not being one civil Trial more, as I remember, in the whole Collection. By the ſame Rule they inſerted this, they might have bound up a thouſand more of the ſame Kind; and I don't doubt but they will in Time, if they think the Publick will take off ſuch for the Sake of thoſe that are really State Trials, or the Trials of Illuſtrious Criminals: This is

1684. 36 Car. II.

a Misfortune we muſt ſubmit to, when the Feet govern the Head, and Bookſellers ſet up for Authors, or, which is the ſame Thing, to direct the Hands they employ, what ſhall be compiled, and what ſhall be omitted.

The Reader obſerves alſo, that this is very improperly called the Lady *Ivy*'s Trial, as it is only a Trial of a controverted Title between Party and Party.

1684. 36 Car. II.

The Trial of MAURICE CAVENAGH, EDMUND POOR, and WILLIAM BOWLAND, for Felony, at the Aſſizes held for the County of in *Ireland*, on the 7th of *March*, 1688. 1 *W.* & *M.*

1688. 1 W. & M.

Cavenagh's Trial.

1688. 1 W. & M.

An imperfect Piece.

Nothing diſcovers the Sagacity of thoſe Gentlemen who publiſhed the laſt Edition of State Trials more than their inſerting ſo very imperfect a Piece as this.

They do not ſo much as furniſh us with the Indictment againſt the Criminals, the Names of the Proſecutors or Witneſſes, or ſo much as the Name of the Place where they were tried.

The Charge.

WE are informed only that a great many People were arraigned for ſtealing Cows, at ſome Aſſizes in *Ireland*, and were acquitted for want of Evidence, the Witneſſes being afraid to appear againſt them, leaſt they ſhould be murdered, or their Houſes fired by *Iriſh* Papiſts.

But that the Perſon from whom the above-ſaid *Edmund Poor* had ſtolen two Cows, appeared againſt him, and teſtified, that when he found his Cows in *Poor*'s Cuſtody, *Poor* paid him for them, who made it Part of his Defence, that he paid the Proſecutor the Money upon Condition he ſhould not trouble him.

Two Witneſſes alſo teſtified againſt *Maurice Cavenagh*, that they found a Skean or *Iriſh* Dagger in his Cuſtody, a Weapon prohibited to be worn by *Iriſh* Papiſts; and *Cavenagh* in his Defence ſaid it was a Butcher's Knife, and when it appeared to be a Skean, *Cavenagh* ſaid, that not only he but the Papiſts of every Pariſh were adviſed by their Prieſts to provide themſelves with half Pikes and Skeans at this Time: But there being no Evidence of his ſtealing Cows, he was acquitted.

Bowland was convicted of ſtealing Cattle as well as *Poor*, and both of them praying the Benefit of their Clergy, the Chief Juſtice *Keating* directed the Ordinary, not to aſſiſt them in reading; and the Ordinary thereupon returning *Non legit* as to both of them, the Chief Juſtice pronounced Sentence of Death upon theſe two, telling them they muſt expect no Pardon; theſe Depredations being ſo common at this Time, that no Man could enjoy his Goods in quiet.

Bowland and Poor convicted.

Sentence of Death againſt them.

When Judgment was paſſed on *Poor* and *Bowland*, the Women of their Relations and Acquaintance, ſet up a frightful Howl in Court; whereupon Judge *Keating* obſerved, they did not howl thus when the Cows came home, they were then buſy in killing and powdering them up.

Rapparees protected by the Soldiers.

The next Thing the Editors preſent us with is a Protection given to ſome *Iriſh* Rapparees by Enſign *Byrne*.

A Letter of Loan by Tyrconnel.

And laſtly we are entertained with a Letter from the Lord Deputy *Tyrconnel* to the Judges of Aſſize, to promote Subſcriptions for a Loan to King *James*, which Judge *Keating* communicating to the Grand Jury, they wrote an Anſwer to it, ſetting forth the extreme Poverty of their County, by the daily Ruin of the *Engliſh*; and deſiring therefore to be excuſed, which the Court were ſo exaſperated at, that they ordered it to be torn in Pieces.

Proceedings in the Caſe of THOMAS KENDAL, and RICHARD ROE, committed by a Secretary of State to the Cuſtody of a Meſſenger for *High-Treaſon*, the 31ſt of *October*, 1695. 7 *W.* III.

1695. 7 W. III.

Kendal and Roe committed for an Eſcape. Move to be admitted to Bail;

1695. 7 W. III.

because the Eſcape was from a Meſſenger.

THE Priſoners *Thomas Kendal* and *Richard Roe*, were committed to *Newgate* by Mr. Secretary *Trumbull*, for being privy to and aſſiſting the Eſcape of Sir *James Montgomery*, (charged with High-Treaſon) out of the Cuſtody of *William Sutton* one of his Majeſty's Meſſengers: Whereupon they ſued out Writs of *Habeas Corpus*, and were brought before the Court of *King's-Bench*, on the 31ſt of *October* 1695, when their Council took Exception to the Return made by the Keeper of *Newgate*; for that a Secretary of State, or Member of the Privy Council, could not commit any Perſon---They inſiſted further, that in Caſe a Secretary might commit, yet the Priſoners ought to be bailed by the *Habeas Corpus* Act, which provided, that Priſoners ſhould be bailed forthwith, unleſs they were committed for Treaſon or Felony, *eſpecially expreſſed* in the Warrant: And here the Nature of the Treaſon Sir *James Montgomery* was committed for, was not expreſſed, That where a Commitment was for Felony *generally*, the Priſoner ought to be bailed by that Act: Nor was the Eſcape of the Priſoner Felony, unleſs he was under a lawful Cuſtody, by a lawful Warrant, expreſſing the Offence; therefore, if the Party commanded receive, or the Perſon to whoſe Cuſtody he was committed was no lawful Officer, the Reſcuer was not guilty of any Capital Offence, It did not appear in this Caſe what the Warrant was by which

and the Treaſon not ſpecially expreſſed.

1695. 7 W. III.

which Sir *James Montgomery* was committed; nor was the Meſſenger, in whoſe Cuſtody he was, a lawful Goaler: The Practice of making their Houſes Goals was but of late Years, our Law-Books took no Notice of him as a legal Officer: Any Man indeed might be commanded to carry another to Priſon, but he did not become a Goaler thereby, to keep him Nine or Ten Months in Cuſtody, and charge him with ſix Shillings and eight Pence a Day for his Lodging and Diet, as ſome Meſſengers had done: And if a Meſſenger could not legally detain ſuch a Priſoner, the Conſequence was, the Eſcape or Reſcue of ſuch Priſoner could not be either Treaſon or Felony.

The Reſcuer can't be tried till the Priſoner is attainted.

Nor could the Reſcuer be tried till the Priſoner himſelf was firſt attainted: And in this Caſe Sir *James* was dead, having never been attainted or indicted, which rendered it impoſſible for the Priſoners to be tried for Treaſon; they as Reſcuers could only be fined and impriſoned, as this Caſe was; which was a further Reaſon for their being bailed.

To this the King's Counſel anſwered, That the reſcuing one in Cuſtody upon Suſpicion of Treaſon was Treaſon; and as to the Commitment by a Secretary of State, this was no Novelty; the Practice was very ancient, as appeared by 11 *Leon.* They had found in the Tower a Commitment alſo by Mr. Secretary *Morriſon*, in 1660, and there had been many more ſince.

1695. 7 W. III.

Treaſon to reſcue one committed for Treaſon.

A Commitment to a Meſſenger held good;

The Chief Juſtice declared it to be his Opinion, that a Priſoner might be committed to any Man on his Apprehenſion for a convenient Time till he could be examined; but then he held, it ought to have been ſpecified in the Warrant for what Treaſon Sir *James* was committed; for the Eſcape would be of the ſame Species of Treaſon with that for which the Party reſcued was committed; and therefore they ought to be bailed.

but the Species of Treaſon ought to be expreſſed.

The Priſoners bailed.

The other Judges being of the ſame Opinion, the Priſoners were bailed.

1701. 13 W. III.

The Trial of PATRICK HURLY, Gentleman, for Perjury and a Cheat, before the Court of *King's-Bench* in *Ireland*, on the 31ſt of *May*, 1701. 13 *W.* III.

1701. 13 W. III.

Hurly's Trial.

Two Indictments.

THE Priſoner was tried on two Indictments; the firſt being for Perjury, in ſwearing before a Juſtice of Peace, of the County of *Clare*, That he was robbed of three hundred forty-five Piſtoles, and other Things of great Value, by four Perſons unknown, whereas he knew them very well, having concerted the Matter with them; neither did they take any Thing from him but what was reſtored him.

The ſecond Indictment charged him with conſpiring deceitfully with one *Daniel Hicky*, and others, to oppreſs the Popiſh Inhabitants of the County of *Clare*, and cheat them of a great Sum of Money.

The Evidence.

The Witneſſes being called, *Dean Neptune*, one of his Majeſty's Juſtices of Peace, depoſed, That the Priſoner made Affidavit before him, That on *Sunday* the 3d of *March* 1699, about Eleven o' Clock at Night, ſeveral Perſons unknown, with their Faces masked, broke into his Father's Houſe at *Moughna*, in the ſaid County of *Clare*, and forcing themſelves into the Priſoner's Chambers, ſhot at him, and tied him and his Friend Mr. *Ronane*, to the Bedſtead: That he took them to be *Iriſh* Papiſts by the Tone of their Voices, but he did not know their Perſons: That they broke open ſeveral Trunks, and out of one of them took a Bag of three hundred ſeventy-four Guineas, three hundred forty-five Piſtoles, a Gold Croſs ſet with Diamonds, and ſeveral other Things, the Whole amounting to about thirteen hundred Pounds.

Calaghan Carty, and ſeveral other Witneſſes teſtified, That the Priſoner propoſed their being concerned with him in this ſham Robbery, and that he (this Witneſs) was actually a Party in it: That the Guineas, the Priſoner pretended to loſe, were but Counters; and though they let off ſeveral Piſtols, they were Arms that belonged to the Houſe, and only loaded with Powder.

Others teſtified, That the Priſoner was in Debt, and propoſed by this Stratagem to raiſe a great Sum of Money on the Popiſh Inhabitants of the County of *Clare*, the late Rapparee-Act obliging the Papiſts to make good ſuch Loſſes where the Robbery was committed by *Iriſh* Papiſts.

His Defence.

The Priſoner's Counſel ſaid in his Defence, That he was known to be a Monied Man: That he brought a great deal of Money out of *France*, and had ſeveral large Sums returned lately from thence: That ſome Gentlemen had a Spite againſt him, and had influenced the Grand Jury not to find the Bill for the Robbery: And that the Witneſſes had been bribed and threatened to make them ſwear it a Sham Robbery, and then calling his Witneſſes,

The Priſoner's Witneſſes.

John Hurly, his Brother, depoſed, That he had received great Sums for his Brother from beyond Sea, and that Rewards had been promiſed to ſome of the Witneſſes on Condition they would ſwear it to be a Sham Robbery.

Dorothy Kemp, the Priſoner's Concubine, alſo teſtified, That ſhe was in the Houſe when the Robbery was committed: That ſeveral Piſtols were fired, and the Priſoner and others were bound by the Robbers, who carried off great Sums of current Money and other Things; and that ſhe had been tampered with to lay counterfeit Money in the Houſe, to prove the Priſoner a Cheat.

Others depoſed, They had been promiſed Rewards, and threatened to ſwear it a Sham Robbery.

The Jury giving no Credit to the Priſoner's Witneſſes, who had but indifferent Characters, after half an Hour's Receſs, brought him in Guilty upon both Indictments; and he was ſentenced

The Priſoner convicted.

1701. 13 W. III.

His Sentence.

sentenced to pay a Fine of One Hundred Pounds on the first Indictment. The King's Counsel afterwards moved for Judgment on the last Indictment, insisting, That the Pillory was the Punishment for a Cheat; but were answered by the Court, That it was so, in Case he was not able to pay his Fine: But what Judgment was given on the last Indictment does not appear in the Collection of Trials.

1701. 13 W. III.

The Trial of WILLIAM HAUNT, the Dragoon, at *Edinburgh*, before the Lord Justice General and Commissioners of Justiciary, on the 19th of *February*, 1711. 10 *Annæ*.

1711. 10 Annæ.

Haunt's Trial.

Indictment.

THE Indictment charged, that on the first or some other Day of *September*, then last passed, there having happened a Tumult in the Town of *Dalkeith*, betwixt some Dragoons quartered there, and the Town's People; and a Party of Dragoons having been sent from the Guard, the Commander of the said Party met the Deceased *Henry Mac Millan* Flesher, in *Dalkeith*; and while he was discoursing with him, the said *William Haunt* one of the Party, came behind the said *Henry Mac Millan* and knocked him down with his clubbed Musket, he, the said *Henry* having not given him the least Provocation; of which Stroke the said *Henry Mac Millan* died the Day after, whereby the said *William Haunt* was guilty of Murder, and ought to be punished with Death and Confiscation of Moveables.

Evidence.

The Witnesses testified, that there was a Tumult at *Dalkeith* on a certain Evening in the Month of *September* then last passed; and that Part of Sir *Richard Temple*'s Regiment of Dragoons being quartered there, Serjeant *Plunket* went from the main Guard with a Party of Dragoons, among whom was *William Haunt* the Prisoner, to suppress the Tumult; and while the Serjeant with his Sword drawn in his Hand, was parlying with the Deceased *Henry Mac Millan*, (one of the Ring-leaders of the Mob) a Dragoon came behind the said *Henry Mac Millan*, and knocked him down with his clubbed Musket, and his Skull being fractured by the Blow, he died two or three Days after.

Verdict.

The Jury being afterwards withdrawn, brought in a Verdict of the following Tenour, *viz.* That, having considered the Indictment at the Instance of *Elspeth Johnson*, Relict of the said *Henry Mac Millan* Flesher in *Dalkeith*, *&c.* against *William Haunt*, Dragoon in Sir *Richard Temple*'s Regiment of Dragoons, the Depositions of the Witnesses, *&c.* They unanimously find it proved, that the Deceased *Mac Millan* was knocked down in the Streets of *Dalkeith*, by one of the Dragoons then present, with the Butt End of a Musket; and that the Wound he received was mortal; but they do not find that the Prisoner *William Haunt* gave the Blow: Whereupon the Court acquitted the Prisoner.

The Prisoner acquitted.

The Trial of WILLIAM LAIDLY *alias* SCOT, of *Mossphennanan*, WALTER LAIDLY his Brother, and JAMES BREDEN, JAMES VEITCH, and JAMES CHEISHOLM, his Servants, before the Court of Justiciary at *Edinburgh*, on the 21st of *January*, 1712. 11 *Annæ*.

1712. 11 Annæ.

Laidly's Trial.

Prosecutors.

THE Defendants were indicted at the Instance of *Donald Mac Pherson*, Son of *Malcolm Mac Pherson*, Merchant Drover, and Sir *James Stewart*, Her Majesty's Advocate, for beating and bruising Her Majesty's Subjects: The Indictment reciting, that the Crimes of violently beating and bruising the Leidges to the Effusion of their Blood, and the wrongously stopping and hindering the Leidges in the use-making of the Ways or ordinary Routs for driving of their Cattle to Mercats, and not only hindering such Cattle with Dogs, and Men on Horse-back, so violently, that the Cattle being rushed into Precipices, became there-through utterly disabled and destroyed; but likewise that the so Invaders, Molesters, and Hounders, do at their own Hand, seize and away take, what of such Cattle they think fit for their own Use; and all this in a most Masterful Way of Oppression and Robbery, are Crimes of a high Nature, and severely punishable, especially when tending to the Discouragement of that Branch of the Trade of this Part of *North Britain*, that consists in the driving of Black Cattle to the *Southern* Parts; and which Kind of Trade must necessarily be given up, unless duly protected and secured against such Masterful Insults and Abuses. Nevertheless, true it was, and of Verity, that the said *William Laidly* alias *Scot*, and the said *Walter Laidly* his Brother, and the other Persons above complained of are guilty, as Actors art and part of the foresaid Crimes; in so far as upon the last Day of *August*, 1st, 2d and 3d of *September*, or one or other of the Days of the said Months of *August* or *September* last, the said Complainers *Donald Macpherson*, being in a peaceable Manner with his Servants driving his Drove of Cattle towards *England*, was, upon that Place of the Road or Highway that is on the North Side of the Water of *Tweed*, near the House of *Mossphennan*, violently attacked and assaulted, about four or five of the Clock in the Afternoon, by the said *William Laidly* of *Mossphennan*, *Walter Laidly* his Brother, and other Persons his Servants and Accomplices, their hounding Dogs at his

The Indictment.

1712. 11 Annæ.

his Cattle, and violently beating and knocking down to the Ground with a Staff, the Perſon of *Hugh Macqueen*, one of the Complainers Servants, and did almoſt cut off the ſaid Servant his Finger with a ſhearing Hook; and not ſatisfied therewith, they the ſaid *William Laidly* of *Moſsphennan*, and *Walter Laidly* his Brother, or one or other of them and their ſaid Accomplices, did violently aſſault the Complainer, by laſhing him with their Horſewhips, and then violently dragging the Complainer backward by the Hair from off his Horſe to the Ground, to the great Effuſion of his Blood, and Hazard of his Life, till reſcued out of their Hands by People that came from the other Side of *Tweed*, upon the Sight of ſuch barbarous Uſage; and which violent hounding of the Cattle, the ſaid *William Laidly* his Brother, and other of the ſaid Accomplices, not only continued and perſiſted in, ſeveral Miles, to the great wracking and Diſtreſs of the Cattle, by Reaſon of the Precipice and Steepneſs of ſome part of the Way, that eight of them were utterly diſabled and left to him the ſaid *William Laidly* to be accountable; therefore beſide that the ſaid *William* did at his own Hand violently ſeize upon, and away take ſix more of the prime and beſt of the Complainers ſaid Oxen or Cattle by way of plain Robbery, wherethrough, and the Loſs of the ſaid other Cattle ſo diſabled, the Complainer is damnified in no leſs than 42 *l.* Sterling, at 3 *l.* per Piece, being the Rate paid at the *Engliſh* Markets, for the Remainder of the Complainer's Drove of that ſort: And this attour the loſs of 12 Head of Cattle more, that died of the ſaid Day's Streſs and Violence, before the Complainers Arrival at *Carliſle:* So that the Damages in all is no leſs than 78 *l.* Sterling, attour the perſonal Injury, as aforeſaid, done to the Complainer himſelf and his Servant. Of which Crimes of violent beating, bruiſing, wounding, and blooding the Complainer and his Servant, and wrongouſly moleſting him in his free Uſe of the Highway, and of wrongouſly hounding his Drove with Dogs as aboveſaid, and the diſabling and wracking of ſo many of his Cattle as aforeſaid, and robbing and plundering them as ſaid is, the forenamed Perſons, or one or other of them and their Accomplices, being found guilty as Actors, or art and part, by the Verdict of an Aſſize, they ought to be decerned, conjunctly and ſeverally, and in *ſolidum*, not only in the Sums aforeſaid, as the Value and Price of the Cattle, ſo robbed and diſabled by them, but likewiſe in the Sum of 100 *l.* Sterling more in Name of Damages an Expence ſuſtained by the Complainer, and otherwiſe puniſhed in their Perſons, to the Terror of other to commit the like in Time coming.

Defence. *William Laidly*, alias *Scot*, and the reſt of the Defendants in Anſwer to this Charge, ſaid That the Lands of *Moſsphennan* lye on the Side of the Water of *Tweed*, through which there lies a common Highway, from the *North* to *Anandale* and *Carliſle*; and that the Graſs or Paſture Grounds of *Moſsphennan* lies near the ſaid Highway, through which the Proſecutor *Donald Macpherſon* driving Twenty Score of Black Cattle towards *England*, with about fifteen Servants, they treſpaſſed upon the mowing Graſs, and committed other great Diſorders, and that his Servants only ſet on or hounding a Dog to drive them off the ſaid Graſs; whereupon *Macpherſon* the Proſecutor drew a Piſtol, and threatened his People to ſhoot them, and they were forced to diſarm him in their own Defence; and acknowledges that he did alſo take ſome of the Proſecutors Cattle, to make him Satisfaction for the Damages they had done him, as he legally might; but that his Brother, the Defendant *Walter Laidly*, was grievouſly wounded in the Fray, and the Proſecutors were really the Agreſſors, and the Occaſion of the Miſchief that was done.

1712. 11 Annæ.

The Evidence. The Witneſſes teſtified, that the Proſecutors were driving their Cattle peaceably along the ſaid Highway, and did not feed or commit any Treſpaſs on the Lands of the Defendant *Moſsphennan (William Laidly,)* who notwithſtanding hunted the Cattle with the Dogs, drove ſome of them over Precipices whereby they were ſpoiled, and ſeized ſeveral more on pretence of Damages, which occaſioned the Fray between the Proſecutor and the Defendants, in which the Proſecutors *Donald Macpherſon*, was pulled off his Horſe, his Piſtols ſeized, and one of his Men ſeverely beaten.

Verdict. The Jury, having conſidered the Evidence with one Voice find it proved, that *Walter Laidly*, one of the Defendants, and ſome others with Dogs, did begin to hound, or hunt the Proſecutors Cattle in the Highway; and that eight or nine of them were driven over a Precipice, whereby five or ſix were diſabled: They alſo find that the hounding or hunting was continued by the Defendant *Moſsphennan (William Laidly,)* and ſome others, for four or five Miles; and that he did drive away and detain ſix of the Proſecutor's Cattle: They find alſo that the Defendant *Walter Laidly* did beat *Macqueen*, one of the Proſecutor's Servants; and that *William Laidly* did laſh the Proſecutor with a Horſe-Whip, pull him by the Hair, and dragg him backwards off his Horſe to the Ground, to the Effuſion of Blood, and that after he was upon the Ground, *Breeden*, one of the Defendants did beat him and ſeize his Piſtol.

Judgment. The Court of Juſticiary, having heard the Verdict, did adjudge, that the Defendants *William* and *Walter Laidly*, ſhould pay a Fine of 35 *l* Sterling, *viz.* 30 *l.* to the Proſecutor *Donal Macpherſon*, for Damage, and 5 *l.* to the Uſe of Her Majeſty; and adjudged that the Defendant *Moſsphennan (William Laidly)* ſhould detain for his own Uſe the ſix Cattle he had ſeized for Damages, and the other Cattle left behind by the Proſecutor, allowing for the Expence of keeping: But that the ſaid *Moſsphennan, (William Laidly)* ſhould give 300 Marks Security, not to moleſt the Proſecutor, his Tenants or Servants for the future. And the Court acquitted and diſcharged the reſt of the Defendants.

The

1721. 8 Geo. I.

The Trial of Captain MITFORD HENRY, Eſq; on the Statute of *Stabbing*, before Mr. Juſtice *Powel*, at the Summer-Aſſizes for the County of *Nottingham*, in the Year 1721. 8 *Geo.* I.

1721. 8 Geo. I.

Captain Henry's Trial.

The Indictment.

THE Indictment charged, That the ſaid *Mitford Henry*, on the 24th of *June* then laſt paſt, at *Elkeſley* in the ſaid County of *Nottingham*, did feloniouſly make an Aſſault on one *John Barugh* with a drawn Sword, giving the ſaid *Barugh* one mortal Wound of the Breadth of half an Inch, and of the Depth of eight Inches, the Sword entering at the left Shoulder of the Deceaſed, and coming out at his left Breaſt; of which Wound the ſaid *John Barugh* then and there inſtantly died; and the Deceaſed had no Weapon drawn, nor had ſtruck the Priſoner before the ſaid Wound was given.

The Caſe.

The Caſe was this: The Priſoner, Captain *Henry*, riding Poſt into the North, was overtaken by the Deceaſed between *Tuxford* and *Bautree*, who asking the Priſoner the Road to *Doncaſter*, (which was the Road they were going) the Priſoner ſuſpecting the Deceaſed to be a Highwayman, directed him another Way, who thereupon left that Road; but finding, by Enquiry, he was wrong, returned, and put into the Road between the Priſoner and the Poſt-boy; whereupon the Priſoner run the Deceaſed through the Back: After which the Priſoner rode on five or ſix Miles, till he came to *Bautree*, where he went before a Juſtice of Peace, and procured a Hue and Cry after the Highwayman, as he called him: But the Caſe will be better underſtood by the following Evidence.

The Evidence.

Mr. *Wardman*, a Gentleman of the Lord *Weſtmoreland*'s, teſtified, That the Deceaſed being Nephew to his Lordſhip's Houſe-keeper, ſhe ſent for him into the Country, deſigning to make him her Heir, and he came down accordingly. And he (the Witneſs) carried him to the Houſes of ſeveral Perſons of Quality, and ſhewed him the Paintings and other Curioſities, the young Man having a Taſte for ſuch Things. And when he went from the Lord *Weſtmoreland*'s, he went to viſit another of his Aunts in that Country, in which Journey he was killed upon the Road. That the Deceaſed was a timerous Man, and not likely to give any Offence, for he had neither Sword or Piſtol, or ſo much as Spurs only a Whip in his Hand. The Witneſs offered him a Sword, but he would not except of it.

Mr. *Pymount*, another of the Lorſt *Weſtmoreland*'s Servants, teſtified, That the Deceaſed had neither Sword nor Piſtol when he went from his Lordſhip's Houſe; and that he behaved himſelf extremely well all the Time he was there.

The Poſt-boy teſtified, That as he was riding before the Priſoner, between *Tuxford* and *Bautree*, a Stranger (the Deceaſed) rode up to them upon the Gallop, and asked the Way to *Doncaſter*, and then turning out of the Way, and riding fifteen or ſixteen Score Yards, he returned towards them again upon the Gallop; and the Priſoner ſaying, He believed the Stranger to be a Highwayman, he anſwered, He was but a little one, if he was one; but the Stranger putting into the Road between the Priſoner and him (the Poſt-boy) he was ſcared, and rode on ſtill faſter; and having galloped together about ſix ſcore Yards, the Priſoner run the Deceaſed through the Body, who thereupon ſaid, *Lord have Mercy upon me! What ſhall I do now?*

The Priſoner demanded, If both the Poſt-boy and the Stranger were not better mounted than he was? To which the Boy anſwered, They were both better mounted; and the Priſoner ſuſpecting the Father of the Deceaſed inſtructed the Boy what to ſay, he ſaid, The Gentleman on the Judge's Left Hand made Signs to this Witneſs, he thought: But Mr. *Barugh*, the Father of the Deceaſed proteſted he made no Signals to the Boy.

Then the Priſoner demanded, if there were not ſeveral other Tracks in the Road beſide that which they were in? To which the Boy anſwered, There were three Tracks. Being asked if the Stranger had Piſtols, he anſwered, He had only a Whip; adding, That the Priſoner, after he had ſtabbed the Stranger, (the Deceaſed) ordered him (the Poſt-boy) to ſay the Stranger had a Piſtol; or he would ſtab him where-ever he met him.

Being asked if he had not told any body that the Stranger had a Piſtol? he anſwered, Yes; he told Captain *Yarborough* ſo; but the Captain ſhook him, and ſcared him, and ſaid He ſhould be hanged. He confeſſed alſo, That he had ſaid before the Juſtice that the Stranger had a Piſtol; which he did, becauſe the Priſoner had threatened to ſtab him if he did not.

The Priſoner demanded, If he did not enquire for a Juſtice of Peace after this Accident? To which the Poſt-boy anſwered, The Priſoner did; and he told him there were two at *Bautree*; and thereupon they rode thither; and Mr. *Liſter* took this Witneſs's Examination there: After which Mr. *Liſter* ſent back one with the Witneſs (the Poſt-boy) to ſee after the wounded Man, and make Hue and Cry after him.

Being asked if the wounded Stranger fell immediately? he anſwered, He rode about fifteen ſcore Yards after he was ſtabbed; and that when they came back from the Juſtice's with the Hue and Cry, there were abundance of People gathered about the Deceaſed.

Being asked if the Priſoner called any where to bid the People take Care of the wounded Man, the Poſt-boy anſwered, No, he did not, though there was a Town hard by.

Bradley, the Conſtable of *Elkesley* (the Pariſh where this Accident happened) teſtified, That the Place where the Deceaſed was killed, was in Sight of *Elkesley*, and not above twelve ſcore Yards from it: That he went to ſee the Corps at Five o'Clock in the Afternoon, upon

Midſummer-

1721. 8 Geo. I.

Midſummer-Day, being about half an Hour after this Accident happened; but did not ſee any Arms the Deceaſed had.

Thomas Smith, another Poſt-boy, teſtified, That he rode Poſt before the Priſoner between *Mansfield* and *Nottingham*, and becauſe he did not carry the Priſoner the Road he liked, he damned him, and ſaid, He deſerved to be ſtabbed; and he would have been glad to get clear of him.

Other Witneſſes teſtified, That the Deceaſed was an honeſt inoffenſive Man, and a Perſon of excellent Senſe, and that being ſent for into the Country by his Aunt, he bought him a Horſe in *London* for five Guineas. Upon which the Counſel for the Proſecutors obſerved, He was but ill equipped for a Highwayman, mounted upon a Horſe of Five Guineas Price, and without either Sword or Piſtol.

The Priſoner's Defence.

Then the Priſoner, in his Defence, ſaid, My Buſineſs calling me into the North about five Weeks ago, I ſet out on the 23d of *June* in the *Cambridge* Stage-Coach, and got thither about Nine that Evening. I had with me a Warrant for Poſt-horſes and Guides as far as *Durham*, whither I was going to ſolicit my private Affairs, but was unfortunately prevented by this unhappy Accident. On *Saturday* the 24th, between Twelve and One at Noon, I got to *Tuxford*, and alighting at the Poſt-houſe there, ordered freſh Horſes to be got ready, and going into a little Room to cool my ſelf, I ſaw Mr. *Robinſon* the Poſtmaſter, who told me I ſhould loſe no Time (while the Horſes were getting ready) if I would refreſh my ſelf with a little Victuals that was then upon the Table; upon which I did ſit down with Mr. *Robinſon* and five or ſix other People, and in that Time went to the Door two or three Times to look after my Portmanteau, and order it to be brought in, there being Things of a conſiderable Value in it: And after I had ſtayed there half an Hour, and paid Eighteen Pence for what I had, I was told the Horſes were ready, upon which I immediately mounted, and purſued my Journey; and when the Boy and I had rode near two Miles, we were overtaken by a Perſon unknown, who came up full Speed between me and the Poſt-boy (who had my Baggage behind him) and asks the Boy, Sirrah, do you know me? and, upon the Boy's telling him No, ſaid, that's well enough: And then perſwading the Boy to ride a Race with him, endeavoured, by whipping his Mare, to force him on. When we came near to *Twiford*-Bridge, the Deceaſed turning to me, asks, Sir, are you going to *Doncaſter*? To which, from the Suſpicion I had already conceived of him, I anſwered, I was not. After this, the Deceaſed continued whipping the Boy's Mare, and bid him ride on, but coming to the parting of the Roads to *Doncaſter* and *Workſop*, the Deceaſed galloped as faſt as he could up the Road to *Workſop*, whilſt the Boy and I kept on our Way in the *Doncaſter* Road; which the Deceaſed perceiving, after he had galloped about fifteen ſcore Yards in the Road he had taken, turned ſhort and quitted it, purſued me and the Poſt-boy croſs the Common as hard as his Mare could carry him; and perceiving him coming again towards us in ſuch a Manner, I declared my Apprehenſions to the Poſt-boy, That I feared he was a Highwayman; to which the Boy anſwered, that he'd warrant him a Rogue, and adviſed me to ride on as faſt as the Horſes would carry us; but the Deceaſed being better mounted, came up with us, croſſing ſeveral Tracks; upon which I pulled my Horſe a little, and let him come in between me and the Poſt-boy, who were within two Horſe-length of each other, and began again his whipping the Boy's Mare, and forcing him on. This confirmed the Suſpicion I had entertained of him, that he was a Highwayman, and that his Deſign was to force the Boy away with my Portmanteau, in which, my Lord, was in a manner my All; and I called out to the Boy to ſtop, to ſee if the Deceaſed would leave us; but the Boy anſwered he could not. After ſome time the Boy recovered the Command of his Mare, which gave me (who was the worſt mounted) an Opportunity of coming up, when I diſcovered the Deceaſed to pull ſomething out of his Pocket on the Right Side, which he held to the Boy, and bid him ride on; at which the Boy looked back, called out to me, *Oh, Sir! Come on, come on!* whereupon the Deceaſed turned towards me, and I perceiving a Piſtol in his Hand, rode at him, and the Deceaſed's Mare being fretted, turned again, which gave me an Opportunity of wounding him. The Deceaſed then rode backwards towards *Elkeſley*, and after a little turned again: And I hope upon ſuch ſuſpicious Behaviour of the Deceaſed, what I did cannot be thought to proceed from any previous Malice towards him.

After this, I told the Boy I had wounded him, who anſwered, He's a Rogue, to be ſure: And I bid the Boy ride on to the neareſt Juſtice of Peace. Immediately after the Accident, I ſaw a Man under a Hedge, who I thought might be a Confederate of the Deceaſed, and having my Sword in my Hand, I told him I had wounded a Highwayman, and bid him go and ſee what became of him: We told it alſo to ſeveral other People we met, particularly at *Ruſſia-Inn*, where I ſtopt to enquire for a Juſtice of the Peace, and was informed there was none nearer than *Bautree*, (the Stage I was going) whither I made all the haſte that I could, and alighting at Mr. *Liſter*'s Houſe, I acquainted him with what I had done, and ſurrendred my ſelf.

But Mr. *Liſter* being in Court, I deſire he may be heard.

The Priſoner's Witneſſes.

Mr. *Liſter* teſtified, that the Priſoner came to him on the 24th of *June*, informed him, he had wounded a Highwayman, and deſired him to take the Poſt-boy's Examination, which he did; and the Boy gave his Evidence plainly and freely, and was not prompted by the Priſoner, or any Body; which Examination was read in Court, being of the following Tenour.

The Poſt-boys Examination read.

The Information of William Glaſeby *of* Tuxford *Poſt-boy, before* Thomas Liſter, *Eſq; this* 24*th of* June 1721.

William Glaſeby, aged about thirteen Years, Servant to Mr. *Robert Robinſon* Poſt-maſter of

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of *Tuxford*, depoſeth, That as he was riding with a Gentleman, this preſent *Saturday* the 24th of *June* 1721, from his Maſter's Houſe at *Tuxford* towards *Bautree*, a certain Perſon unknown to the Deponent, did ride up to him in the Lane near *Houghton*-Park, and bid him put on ſeveral Times, and whipped his Mare, and perſuaded him to ride a Race with him, which he refuſing, he continued riding ſtill along with him, and asked the Gentleman (with whom this Deponent was going to *Bautree*) if he was going to *Doncaſter*; and upon his ſaying he was not, the ſaid unknown Perſon turned-up another Road, leading towards *Workſop*; but perceiving that this Deponent, and the ſaid Gentleman, kept on the direct Road towards *Bautree*, he left the Road he had taken, and purſued this Deponent and the Gentleman with him, as hard as his Horſe would carry him; and getting between this Deponent and the Gentleman, this Deponent perceived a Piſtol in the Hand of the ſaid unknown Perſon, upon which he called out to the Gentleman, *O, Sir! Come on, come on!* And the ſaid Gentleman coming up to the ſaid unknown Perſon, did, as this Deponent believeth, give him a Wound with his Sword: But the ſaid unknown Perſon did, after that, purſue the Deponent, and the ſaid Gentleman, a little Way, and then turned, and this Deponent knows not what became of him after, but rid on with the ſaid Gentleman to *Bautree*, who went immediately before *Thomas Liſter*, Eſq; one of his Majeſty's Juſtices of the Peace, to give him an Account of the Matter; and this Deponent did verily believe the ſaid unknown Perſon was a Highwayman, and had a Deſign to rob the ſaid Gentleman, who gave no Manner of Diſturbance to the ſaid unknown Perſon, before he drew his Piſtol, but rode peaceably on the Road.

Then the Priſoner deſired the Court would obſerve the Difference between the Information the Poſt-boy gave before the Juſtice, and the Evidence he gave in Court.

Captain *Yarborough* alſo teſtified, That the Poſt-boy related the Fact to him as it was in the Information.

Mrs. *Murphin*, who kept the Poſthouſe at *Bautree*, teſtified, That the Poſtboy told her the ſame Story.

Mr. *Reresbury*, who went back with the Poſtboy, to find the wounded Man, and make Hue and Cry after him, by Mr. *Liſter*'s Order, teſtified, That the Boy gave him the ſame Account as in the Information; that the Boy heard the Information read over, and ſaid it was true: Being asked, if he was ſure the Boy ſaid, That the deceaſed had a Piſtol? he anſwered, Yes.

The Fact having been committed in *Nottinghamſhire*, and Mr. *Liſter* thinking it proper the Poſt-boy ſhould give another Information before the Juſtices of Peace of that County, the following Information was taken before Brigadier *Sutton*, *John Digby*, and *Leonard Pinkney*, Eſqrs; Juſtices of Peace of the County of *Nottingham*, on the 25th of *June* 1721, *viz.*

Another Examination of the Poſt-boy.

This Deponent ſaith, That on *Saturday* the 24th of this Inſtant *June*, he came out from his Maſter's, Mr. *Robinſon*'s, the Poſtmaſter of *Tuxford*, with a Gentleman, to ride Poſt with him to *Bautree*, that the ſaid Gentleman and this Deponent rid along the Road till they came to *Houghton Bridge*, near *Elkeſley*, at which Place the Deceaſed Perſon asked the Gentleman if he was going to *Doncaſter?* to which the Gentleman anſwered, No: Whereupon the Deceaſed put before the ſaid Gentleman, and asked this Deponent, if he knew him, then went paſt this Deponent, and rode up the Road leading to *Workſop*; but ſeeing the ſaid Gentleman and this Deponent continue in the Road to *Bautree*, he came riding down a *Ley*, and as hard as he could, to meet the ſaid Gentleman and this Deponent, in the ſaid Road to *Bautree*; whereupon the ſaid Gentleman ſaid to this Deponent, that he feared the ſaid Deceaſed was a Highwayman: That the ſaid Deceaſed came up with the ſaid Gentleman and this Deponent, whereupon this Deponent's Mare that he rode on, run away with him, which he believes ſhe did from the Deceaſed's whiping his Mare, for that till that Time ſhe had not run away with him upon the Road before: And this Deponent ſaith, that as his Mare was running away, he looked behind him, and ſaw in the Deceaſed's Hand ſomething beſides a Whip, which he thought was a Piſtol; upon which this Deponent was affrighted, and called to the Gentleman to come on, and thereupon the Gentleman came up to the Deceaſed, and he ſaw the Gentleman's Sword in his Hand, but cannot ſay he either ſaw him run it into the Deceaſed's Body or pull it out; and this Deponent ſaith, that afterwards the Deceaſed turned towards *Elkeſley*, but immediately turned back again towards the Gentleman and this Deponent, and galloped after them about fifteen Score Yards, and the Gentleman bid this Deponent, put on as faſt as he could; and what became of the Deceaſed afterwards, this Deponent knows not: And this Deponent ſays, that he did not apprehend there was any Quarrel betwixt the Gentleman and the Deceaſed.

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Mr. *Pinkney*, one of the ſaid Juſtices of Peace teſtified, That the Coroner ſaid It was plain wilful Murder, before he heard the Evidence or had ſeen the Body.

Glaſeby, the Father of the Poſt-boy teſtified, That his Son told him he thought the Deceaſed was an Highwayman.

Then the Earl of *Litchfield*, the Lord *Baltimore*, and ſeveral other Perſons of Quality teſtified, That the Priſoner was a ſober, modeſt, peaceable Man, not given to Quarrel.

Mr. *Croe*, teſtified, that he ſaw the Priſoner's Portmantua packed up, and there were in it twelve Shirts, and other Linen, a ſuit of black Cloaths, a Diamond Ring, a Gold Watch, ſome Gold, Bills for 200 *l.* and the Writings of his Eſtate.

Obſervations of the King's Counſel.

Then the Counſel for the Proſecutor obſerved, That it was very ſtrange the Deceaſed ſhould be taken for a Highwayman, having no Arms and uſing no threatning Language: At this Rate, any Man might be run through the Back upon the Road. It was plain the Boy was terrified by the Captain and his Friends, to ſay what he did before the Juſtices

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of Peace, by that Expreſſion; *That he did not know what became of the Deceaſed*; for he had owned he knew what became of him, *That he cryed out, Lord have Mercy upon me*, when he fell, and afterwards he ſaw him lye dead in a Barn at *Elkesly*; and if his Evidence was different, greater regard was to be had to what he teſtified in Court, than what he ſaid under the Terror and Surprize he was in, before the Juſtice of Peace; and admitting the Latter was to be believed, even thoſe Informations did not ſhew there were any Threats or Violence uſed by the Deceaſed, that could juſtifie the running him through the Back in ſo barbarous a Manner, and then leaving him to periſh without taking any Manner of Care of the wounded Man, though he fell in the Priſoner's Sight. The Priſoner might have gone to *Elkeſley*, a Town juſt by, and have enquired for a Juſtice of Peace, and needed not have travelled five or ſix Miles farther to meet with one; but this he did, that he might have an Opportunity of terrifying the Poſt-boy, and inſtructing him what to ſay. It was evident the Deceaſed had no Arms, for none were found upon him after he was dead.

The Coroner's Evidence.

The Coroner depoſed, That the Boy teſtified before him, that the Priſoner threatned him, and he might ſay when he came to *Elkeſley*, that if the Fact appeared to be as it was repreſented to him, it was wilful Murder; but a Jury was ſworn, and the Witneſs fairly examined before any Verdict was given: Here the Boy's Examination before the Coroner was read, and was as follows, *viz.*

William Glaſeby, a Boy of thirteen Years of Age, *&c.* Guide to a Gentleman that was riding Poſt, ſweareth, That, as they were riding towards *Bautree*, at a Place called *Twiford Bridge*, a Gentleman unknown came galloping after them, and at the Place aforeſaid, came up and asked the Gentleman that was riding Poſt, if he was for *Doncaſter?* and the Gentleman anſweredNo: Then the Perſon unknown rode forward without ſaying any more, and took up the Road that led to *Elkeſley*; but when he ſaw the Poſter and the Boy in another Road, he turned down a Ley Land, into the Road that the Poſter was in, and galloped after the Poſter; and when the Poſter ſaw the deceaſed coming towards them again, he ſaid to the Boy, It is well if this Fellow be not a Highwayman: And further the Boy ſaith, the Poſter ſtopped, and came behind the Man deceaſed, and took an Opportunity to draw his Sword, and ſtabbed the Deceaſed a little below his left Shoulder, and out at his left Breaſt (as appeared by the Wound when viewed by the Jury). The Boy ſays the Sword was bloody from the Point, within a Hand's Breadth of the Hilt, and that this was done in *Elkeſley* Field, where the Deceaſed was found; and further the Boy ſays, that when this was done, the Poſter came up to him with his Sword in his Hand all bloody, and bid him ride on faſter, and did not put up his Sword untill he came to a little Houſe called *Ruſſia-Inn*; and further the Boy ſays, that as they rode along, the Poſter came up to him, and ſaid, Sirrah, did not you ſee a Piſtol in yonder Fellow's Hand? and the Boy anſwered he did not; but Sirrah, ſaid he, *if you do not ſay that you ſaw a Piſtol in his Hand, I will ſtab you whereſoever I meet you*; and further the Boy ſays, that the Poſter as they rode along, kept telling him what he ſhould ſay when he came before a Juſtice of Peace; and when they came at *Bautree*, he had the Boy before *Thomas Liſter*, Eſq; one of his Majeſty's Juſtices, to be examined; but the Boy upon Oath ſays, that he was ſo frightned, knowing that the Poſter had ſtabbed the other Gentleman, that he durſt not ſpeak the Truth, becauſe he had ſo threatned him of his Life, if he did not ſay as he had told him, and when they came before Mr. *Liſter*, the Boy owns he did ſay, that he ſaw a Piſtol in the Deceaſed's Hand; but what he ſaid there, he owned was out of Fear of the Poſter, becauſe he was there preſent; but now he actually declares that what he ſwore there, was not true upon the Piſtols account, for he ſays, that he did not ſee any Piſtol in the Deceaſed's Hand, and he fully believes, that he had nothing in his Hand but his Hand-Whip: And further the Boy ſays, that the deceaſed Gentleman gave no Manner of Abuſe to the Poſter, nor ſaid any Thing to him, either more or leſs, when he came up to him the ſecond Time, but, he thought, had a Mind to ride along with them to *Bautree*, he being a Stranger to the Road.

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The Coroner being asked, Whether this was drawn up when he took the Inquiſition, or afterwards from his Minutes? the Coroner anſwered, from his Minutes afterwards; and being asked for his Minutes, ſaid they were at Home.

Then the Judge reproved the Coroner for not drawing up the Inquiſition when he took it, but truſting to his Minutes, which ought never to be practiſed in ſuch Caſes.

The Priſoner's Counſel obſerved afterwards, That, if the Evidence the Poſt-boy gave before the Juſtices of Peace was true, the Caſe did not come within the Statute of Stabbing; for by this Evidence it appeared the Deceaſed had a Piſtol in his Hand, which was equivalent to the having a Weapon drawn.

Judge Powel's Directions to the Jury.

Judge *Powel* proceeding to ſum up the Evidence ſaid, That the Deceaſed by his imprudent Conduct in galloping up to the Priſoner, and then coming up a ſecond Time and putting between him and the Poſt-Boy, had given Ground of Suſpicion, and he ſhould in the like Circumſtances have thought his Pocket in Danger, and might have been tempted to ſtrike ſuch a one; but the Stabbing him was a raſh Action: However he directed the Jury to bring it in common Manſlaughter, and not Manſlaughter upon the Statute, which was Felony without Benefit of Clergy.

The Jury being withdrawn, after a ſhort Receſs, brought in the Priſoner guilty of Murder; but the Judge telling them, That could not be upon this Indictment, the Priſoner being indicted on the Statute of Stabbing, the Jury ſaid, they found him Guilty of the Charge in the Indictment: But the Judge prevailed on them at length to find the Matter ſpecially for the Opinion of the Judges; and as Mr. Juſtice *Powel* himſelf was of Opinion, the Fact was but common Manſlaughter, I preſume his Brethren were of the ſame Opinion,

1721. 8 Geo. I. nion, which brought off the Captain; for though the Widow of the Deceaſed lodged her Appeal, this could not affect the Priſoner, after he was adjudged to have been guilty of Manſlaughter; though the Appeal would have lain, if the Priſoner had been acquitted. 1721. 8 Geo. I.

1735. 9 Geo. II. *Trial of* Adams *and* Long.

The Trial of THOMAS MAC ADAMS Soldier, and JAMES LONG Corporal, in Colonel *Hamilton*'s Regiment of Foot, for *Murder*, before the High Court of Admiralty in *Scotland*, on the 17th of *September*, 1735. 9 *Geo.* II.

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Charge. THE Information charged the Priſoners with the Murder of *Hugh Frazer* the younger, of *Belnain*, Merchant of *Inverneſs*, in Manner following, *viz.*

That on the 4th of *June* laſt, the ſaid *Hugh Frazer* being then with ſome others, all them unarmed, in an open Boat upon the High-Seas off the Shore of *Nairn*, in Proſecution of their lawful Buſineſs, and offering Violence or Diſturbance to no Man, were made up to by the *Cuſtom-Houſe* Boat, having on Board ſeveral Perſons, and amongſt theſe the Pannels (the Priſoners) who upon their firſt Appearance were diſcovered to be armed with Guns ſcrewed Bayonets, and which Guns afterwards appeared to have been charged, and were then cocked and levelled againſt that Part of the other Boat where the Defunct ſtood: That upon the two Boats coming cloſe together, and ſo ſoon as the ſaid *Thomas Mac Adams* and *James Long* came within reach, without giving the leaſt Intimation of their Deſign, other than what was to be dreaded from their outward Appearance, and without demanding or endeavouring to force Admittance into the other Boat, the firſt Salutation given, was a Thruſt by each of the ſaid Pannels with their ſcrewed Bayonets againſt the Defunct, who then unluckily happened to ſtand on the Side of the other Boat oppoſite to them; though at the ſame Time it is ſaid in the Libel, and will be proved, that how ſoon the two Boats came ſo near as to be in ſpeaking Terms, the Defunct called out to the Pannels to uſe no Violence, and not to fire, for that he and the others in Company with him were in their Will: Notwithſtanding of which, the Pannels in Execution of their premeditate Malice, and contrary to the Advice of their own Companions, did without the leaſt Provocation, Reſiſtance, or ſo much as attempting to board the other Boat, begin the Attack in manner libelled, and by theſe two Thruſts would then have undoubtedly bereaved the Defunct of his Life, had he not found means to evade the Thruſts, at the ſame time catching hold of the two Guns, and holding them up, ſo as to prevent Miſchief in caſe they had diſcharged them; and in the Struggle, which enſued upon this, the two Pannels endeavouring to pull away and recover the Guns, and the Defunct having his Gripe, the *Cuſtom-Houſe* Boat being then on float, the Defunct was either pulled or forced to ſtep into the *Cuſtom-Houſe* Boat, not daring to let go his Hold of the Guns, and ſtand in Chance of other two Thruſts; in which Struggle, or by the Motion of the Boats, all the three fell to the Ground: Whereupon the ſaid *Thomas Mac Adams* did deliberately unſcrew the Bayonet from off his Gun, and therewith gave the Defunct a mortal Wound in the Breaſt, of which he immediately fell down, and probably would have died: But the Pannels, not ſatisfied with the Barbarity already committed, and in further Proſecution of their premeditated Deſign to Murder, did in a moſt cruel and barbarous manner, toſs the Defunct, then in a helpleſs Condition, over board into the Sea; and upon his catching hold of his own Boat, and endeavouring ſo to ſave himſelf from drowning, the Pannel *James Long* ſtruck him down with his Gun with ſuch Violence, that the Iron Ram-rod was broke by the Force of the Stroke; of the which Wound and Stroke the Defunct died in a few Minutes, being taken up into his own Boat. From all which the Libel concludes moſt relevantly, that the Pannels and each of them are Guilty, Actors art and part of the Crime of Murder with which they are charged, and ought therefore to underly the Pains of Law.

Defence. The Pannels (the Priſoners) in their Defence ſaid, That they bore no Malice to the Deceaſed, nor had any Intention to kill him, or any Perſon whatever: And ſhould it be proved, as they believed it would not, that any Stroke or Blow was given by either of them to the Deceaſed, of which he might afterwards die; it was done in their juſt and lawful Defence, and conſequently was not Murder.

The Libel found Relevant. The Judge of the Admiralty having conſidered the ſaid Libel (or Charge) and the Pleadings thereupon, find the Libel, That the Pannels (the Priſoners) or either of them, did kill *Hugh Frazer*, Relevant to infer the Pains of Death and Confiſcation of Moveables: And ſuſtain the Defence of Self-Defence proponed by the Pannels, That the killing the ſaid *Hugh Frazer* by the Pannels, or either of them, was in the neceſſary Defence of their Lives, and repells the whole other Defences proponed by the Pannels.

Evidence for the Proſecutors. The Witneſſes for the Proſecutors teſtified, That the King's or *Cuſtom-Houſe* Boat came up with the Boat wherein the Deceaſed *Hugh Frazer* was, on the 4th of *June* laſt: That in *Frazer*'s Boat there were thirteen Men, and in the King's Boat ſeven Men and three Soldiers, whereof the Priſoners *Thomas Mac Adams* and *James Long* were two: That when the two Boats met, the Priſoners had their Bayonets ſcrewed upon their Muskets, and levelled them towards that Part of the Boat where *Hugh Frazer* ſtood; whereupon he called out to the Soldiers not to fire, for that he and the reſt in the Boat with him were at their

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their Wills; but the Soldiers never the leſs threatned to fire: Whereupon *Hugh Frazer* ſtanding on the Side of his Boat, took hold of the Muzzles of the Muskets in the Hands of the ſaid *Long* and *Adams*, and they endeavouring to diſengage their Pieces, pulled *Frazer* into the King's Boat, when a Wave of the Sea raiſing up the King's Boat, they all three fell down in the Bottom of it, and *Frazer* happening to fall upon *Long* the Corporal, and *Mac Adams* by the Side of *Long*, he ſaid to *Mac Adams*, *why don't you ſtick or ſtab the Man above me?* and thereupon *Mac Adams* unſcrewed his Bayonet from the Muzzle of his Piece, and thruſt it into *Hugh Frazer*'s Breaſt, who getting up after he had received the Wound, *Long* alſo got up after him, and puſhed *Frazer* over the Boat-Side into the Sea, and as he was falling *Long* ſtruck him with that Violence with his Musket, that the Iron Ram-rod and the Stock was broke and that *Hugh Frazer* being taken out of the Water died immediately after: That this Violence occaſioned ſome to ſtep out of *Frazer*'s Boat into the King's Boat to prevent further Miſchief, and one *Kinman* took a Blunderbuſs out of the Hand of Mr. *Townſhend* a Land-Waiter, and threw it into the Sea: But before the Soldiers wounded *Hugh Frazer*, no Perſon went on Board the King's Boat, or offered to make any Defence, but ſubmitted to the King's Officers; nor was there any other Arms on Board *Frazer*'s Boat but two or three Swords, and a broken Piſtol.

Other Witneſſes depoſed, That when the King's Boat came near *Frazer*'s Boat, *Hugh Frazer* called to the Soldiers to uſe no Violence, for they were willing to permit thoſe in the *Cuſtom-Houſe* Boat to ſeize what Goods were on Board; however, when the King's Boat lay aſide the other Boat, the Soldiers, who had their Muskets cocked, and Bayonets ſcrewed upon them, puſhed at *Hugh Frazer* with their Bayonets who catching hold of the Muskets, that were in the Hands of the Priſoners *Long* and *Adams*, they endeavoured to diſengage and recover their Muskets, and in the Struggle pulled *Hugh Frazer* into the King's Boat who was killed in the manner the former Witneſſes teſtified.

Another Witneſs depoſed, That there were on Board the Boat where *Hugh Frazer* was, nine Hogſheads and a broken half Hogſhead: That the half-Hogſhead contained Wine, but what Liquor was in the other Hogſheads he knew not; but they were taken in at *Tarbatneſs* and were intended to be landed on the *Murray* Side of the *Frith*, near the Place where *Frazer*'s Boat was when the King's Boat came up with them.

Witneſſes for the Priſoners.

On the other hand, a Witneſs called by the Priſoners (who was one of the Crew belonging to the *Cuſtom-Houſe* Boat) teſtified, That when the King's Boat approached the Boat where the Deceaſed *Hugh Frazer* was, ſome of *Frazer*'s People threatned to do thoſe in the King's Boat a Miſchief, if they came any nearer; and as ſoon as the King's Boat came up cloſe to the other Boat, *Hugh Frazer* jump'd into the King's Boat, and laid hold of the Priſoners Muskets which they held in their Hands, with the Butt Ends in the bottom of the Boat; and before this there was no Violence or Thruſt offered by the Soldiers, for *Townſhend* the Land-Waiter had cautioned the Soldiers to offer no Violence: That *Hugh Frazer* ſeizing the Muskets in the Soldiers Hands, occaſioned a Struggle, in which all three of them fell to the bottom of the Boat; and that during this Scuffle, one *Mackinnan*, who belonged to *Frazer*'s Boat, entering the King's Boat with a Piſtol, with which he ſtruck *Townſhend* the Land-Waiter over his Head, and inſulted him till two others in the King's Boat came to his Aſſiſtance, and wreſted the Piſtol out of *Mackinnan*'s Hand, and blew the Prime out of the Pan, the Piſtol being whole and prepared for firing: Adding, that the Deceaſed *Hugh Frazer* fell over-board after he got up; but he did not ſee the Soldiers uſe any Violence to him which could occaſion it.

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Townſhend the Land-Waiter himſelf depoſed, That the King's Boat coming up with *Frazer*'s Boat on the 4th of *June* laſt, he (the Deponent) required Acceſs to *Frazer*'s Boat, but was refuſed and threatned by ſome of *Frazer*'s People, if they attempted to come on Board; and that *Hugh Frazer* jumped out of his own Boat into the King's Boat, and ſeized the Muskets in the Soldiers Hands, as the laſt Witneſs depoſed, and all three fell to the Bottom of the Boat; and during this Struggle *Mackinnan* alſo entered the King's Boat and knocked him (the Witneſs) down with a Piſtol, and abuſed him till two in the King's Boat came to his Aſſiſtance, and wreſted the Piſtol from *Mackinnan*; and that two others entered the King's Boat with *Mackinnan*.

That *Hugh Frazer* received a wound in his Breaſt, of which he died; but how he came by that Wound, or who gave it him, he knows not.

William Ogilvy, Tide-Surveyor of the Cuſtoms at *Inverneſs*, teſtified, that he applied to Captain *Cofield* of Colonel *Hamilton*'s Regiment, to allow him a Corporal and two Soldiers to go on Board the King's Boat, having received Information that a Ship was expected upon the Coaſt, wherein were ſome run Goods; and thereupon Captain *Cofield* gave Orders that Corporal *Long*, *Thomas Mac Adams*, and *John Broad* ſhould wait the Deponent's Orders, and go on Board the King's Boat when required; and that he thereupon ordered them to go on Board the King's Boat.

John Broad the Soldier depoſed, That he was ordered on Board the King's Boat with *Long* and *Adams*, as the laſt Witneſſes teſtified; and that the King's Boat coming up with the Boat in which was the Deceaſed *Hugh Frazer* and ſome other Merchants, the *Cuſtom-houſe* Officers were refuſed Acceſs, and threatned if they attempted to board *Frazer*'s Boat; and when the King's Boat came cloſe to them, the ſaid *Hugh Frazer* jumped on Board the King's Boat! And that he (the Deponent) was attacked at the ſame Time by ſome of the People of *Frazer*'s Boat, who endeavoured to wreſt his Arms from him; and during

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during this Struggle, he did not obſerve what became of *Hugh Frazer* and the other two Soldiers.

Two more of the Crew belonging to the King's Boat confirmed the Teſtimony of the two laſt Witneſſes.

Then Brigadier *John Moyle*, Commander in Chief of the Forces in *North Britain*, depoſed, That he had Orders to command the Troops there, that they ſhould, when required give Aſſiſtance to the Officers of the Revenue in ſeizing of Goods offered to be run: And that when a Soldier upon his Duty is invaded, and an Attempt made to diſarm him, if ſuch Soldier ſhall willingly part with his Arms, and not uſe his beſt Endeavours to have the free Uſe of them, ſuch Soldier is liable to be puniſhed with Death, by a Court Martial.

Major *Mordecai Abbot*, and Major *Edward Pole*, confirmed the Evidence of the Brigadier.

Verdict. The Jury having duly conſidered the Evidence, unanimouſly find it proved, that the Pannels (the Priſoners) *Thomas Mac Adams* and *James Long*, are both Guilty, art and part, of killing *Hugh Frazer*; and by Plurity of Voices do not find the Defences for the ſaid Pannels proved, *viz.* That the killing the ſaid *Hugh Frazer* was in the neceſſary Defence of their Lives.

Sentence of Death. Whereupon the Judge of the Admiralty paſſed the following Sentence, *viz.* That the ſaid *Thomas Mac Adams* and *James Long*, be taken from the *Tolbooth* at *Edinburgh*, to the Sands of *Leith*, within the Flood-Mark, on the third *Wedneſday* of *November* next, being the 19th of the ſaid Month, betwixt the Hours of Two and Four in the Afternoon, and there hanged by the Neck on a Gibbet till they be dead; and ordains all their Moveables, Goods and Gear, to be eſcheat, and in brought to his Majeſty's Uſe.

The Priſoner's petition the Court of Juſticiary to ſuſpend the Sentence. The Priſoners, *James Long* and *Thomas Mac Adams*, appealing to the Court of Juſticiary againſt the Sentence of the Court of Admiralty, ſet forth, That the ſaid *James Long* was Corporal, and the ſaid *Thomas Mac Adams* a Centinel in Colonel *Archibald Hamilton*'s Regiment of Foot, which at the Time mentioned in the Indictment lay at *Inverneſs*, and were ordered by their Superiour Officers to go along with certain Officers of the Cuſtoms in the Execution of their Duty, and for the Diſcovery of Goods ſuppoſed to be run: That upon the 4th Day of *June* laſt in the Afternoon, the King's Boat, on Board of which the Complainers were, gave Chaſe to, and came up with a ſmall Boat wherein the Defunct *Hugh Frazer* was with ſeveral others: That the Officers having demanded Acceſs to ſearch the Boat, the ſame was not only refuſed, but certain Perſons in the other Boat threatned, that if the Officers did not leave them, they ſhould meet with a Miſchief: That the King's Boat with ten Men on Board: having come up along the Side of the other Boat in which there were a greater Number of Men (they being, as it now appears, thirteen in all) the Deceaſed *Hugh Frazer* did without any Provocation jump into the King's Boat, and did immediately catch hold of the Muzzles of the two Pieces in the Hands of the two Complainers, thereby endeavouring to diſarm them: that in this Struggle the Complainers endeavouring to keep their Arms, and the Deceaſed to diſarm them, all the three fell to the bottom of the Boat: That the Defunct, was, preſently after his jumping into the King's Boat, followed by three other Perſons from the other Boat, one of which, *Evan Mac Kinnan*, knocked down one of the Officers with the Butt End of a Piſtol which he brought with him, and wreſted a Blunderbuſs out of the Hands of the ſaid Officer, and threw the ſame into the Sea, and the others attacked the other Perſons in the King's Boat, and would in all Probability have been followed by all thoſe aboard the other Boat; and that poſſibly the Defunct might receive a Wound in this Scuffle. And further the Complainers repreſented, That by the Statute 14 *Car.* II. *cap.* II. Officers of his Majeſty's Cuſtoms and their Deputies, are authorized to go aboard any Ship or Veſſel to ſearch for, and ſeize prohibited and uncuſtomed Goods, as the ſaid Act particularly directs, and a Penalty is thereby inflicted upon every Perſon who ſhall reſiſt, abuſe, beat, or wound any Officers in the Execution of their Office, or ſuch as ſhall act in their Aid or Aſſiſtance, either on Board any Ship or Veſſel, or upon the Land or Water. And likewiſe by the ſame Statute *Sect.* 3. it is enacted, That all Officers belonging to the Admiralty, Captains and Commanders of Ships, Forts, Caſtles, and Block-houſes; as alſo all Juſtices of the Peace, Mayors, Sheriffs, Bailiffs, Conſtables, Headboroughs, and all the King's Magiſtrates, Officers, Miniſters, and Subjects, whatſoever, whom it may concern, ſhall be aiding and aſſiſting to all and every Perſon or Perſons, which are or ſhall be appointed by his Majeſty to manage his Cuſtoms, and their reſpective Deputies in the due Execution of all and every Act and Thing, in and by this Act required and enjoined; and all ſuch who ſhall be aiding and aſſiſting unto them in the due Execution thereof, ſhall be defended and ſaved harmleſs by Virtue of this Act: All which Particulars ſtand further confirmed by the Writs of Aſſiſtance granted to the Officers of his Majeſty's Cuſtoms, and which very Writs are founded upon the above-recited Statute, and the other ſubſequent Acts of Parliament which are relative thereto; and where a Number of Men enter by Violence, any Houſe or Ship to diſarm the Perſons within or on Board, and deprive them of their Liberty, they cannot know what further Violence was intended to them; and therefore at this Attempt the Right of Self-Defence begins. From all which the Complainers concluded, That, as the King's Boat was unlawfully invaded, they who were aboard of the ſame, might reſiſt the Invaders, eſpecially ſeeing they had Reaſon to be afraid of their Lives, after being maſtered and diſarmed; and did therefore crave, That the Court would ſuſtain their Defence ariſing from the Facts above-mentioned, *viz.* That they being aboard the *Cuſtom-houſe* Boat, in order to give their Aſſiſtance to the Officers of the Cuſtoms in

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in the Execution of their Duty, the Boat was forcibly invaded and entered into by the Defunct and his Accomplices, and all or ſome of the Perſons therein violently attacked; and that in their ſaid Scuffle the Slaughter mentioned in the Libel enſued, Relevant to Aſſoilzie the Complainers: Notwithſtanding whereof, the ſaid Judge did pronounce the abovefaid Interloquitor, and remit them and either of them with the Libel and Defence, and the ſeveral Circumſtances and Qualifications of the Defence, and the Facts alledged on by the Purſuers for the eleiding thereof to the Knowledge of an Aſſize, and has alſo ſince pronounced Sentence of Death againſt the Complainers: From all which their Reaſons of Suſpenſion will manifeſtly appear. For *Primo*, It might eaſily appear by the Fact, as laid in the Libel, that this Homicide was, at the very worſt, *Homicidium in Rixa commiſſum*; and ſeeing by the many Circumſtances which accompanied it, it might be Relevant upon the Proof, that there was no Malice even antecedent to the Blow; and therefore this Libel ought not to have been ſuſtained to infer the ordinary Pain, unleſs it had been burdened with a Proof of the Deſign of killing. 2*do*, The Relevant Defence abovementioned, pled for the Complainers, was repelled by the ſaid Interloquitor, ſeeing nothing was ſuſtained to them but ſingly this Defence, That the killing the ſaid *Hugh Frazer* by the Pannels or either of them, was in the neceſſary Defence of their Lives, and their other Defences were repelled: Whereas it ought to have been explicitly ſuſtained to them, That, the Boat in which they were being forcibly and violently invaded, and they in the utmoſt Danger of being diſarmed and deprived of their Liberty, they were at Liberty to repel Force by Force, though this ſhould terminate in the Death of the Aggreſſor; in the ſame Manner as a Man attacked on the the Highway or in his Houſe, may lawfully defend his Poſſeſſion, if the Aggreſſor obſtinately perſiſts in his Invaſion; wherefore the Interloquitor ought not to have been reſtricted to the neceſſary Defence of their Lives, ſeeing they were entitled to repel Force by Force, by reaſon of the unlawful Invaſion of the Boat and of their Arms; nor were they bound to abandon either the one or the other, though they had not been in any immediate Danger of loſing their Lives. 3*tio*, By circumſcribing the Defence to the Caſe of the neceſſary Defence of their Lives, an Inqueſt might be led to believe, That a reaſonable Fear for their Lives, ſuch as the Complainers, were then under, was not within the Deſcription of the Interloquitor, and thereby the Complainers might be deprived of the Benefit of what Proof they might adduce for their being under ſuch reaſonable Fear. And 4*to*, This is ſtill the moſt unjuſt with Regard to the Complainers, that by the Military Law they were liable to the Pains of Death for Cowardice, and abandoning their Duty, if they had ſuffered themſelves to be diſarmed without being overpowered by a ſuperior Force, which would have been the more ignominious in their Caſe, they being in that particular Struggle two againſt one; ſo that That Part of their Defence, that they were upon their Duty, ought to have been ſpecially ſuſtained to them, ſeeing otherwiſe they might have ſuffered Death for neglecting their Duty, and Death for doing it: And the ſaid Lords had undoubted Juriſdiction to ſuſpend Decreits and Acts pronounced in the High Court of Admiralty, in Cauſes Criminal upon Relevant Grounds of Iniquity.

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The Sentence ſuſpended.

The Court of Juſticiary having conſidered the ſame Appeal and Premiſſes, Decreed that the Judge of the Admiralty had committed Iniquity, in reſtricting the Defences proponed for the Appellants, to the neceſſary Defence of their Lives, and repelling the hail other Defences proponed for them; and therefore the ſaid Court of Juſticiary did ſuſpend the Interloquitor on the Relevancy, the Verdict returned by the Aſſize, and the Sentence pronounced by the ſaid Judge, with all that might follow thereupon; and diſcharged the Magiſtrates of *Edinburgh*, and all other Officers in the Law, from putting the ſaid Sentence of Death in Execution in all Time coming.

The Priſoners diſcharged.

The ſaid Court alſo, upon the Petition of the Priſoners, did, with the Conſent of his Majeſty's Advocate, order them to be ſet at Liberty, upon their giving 300 Marks Bail to anſwer any Indictment that ſhould be exhibited againſt them, by his Majeſty's Advocate, within the Space of ſix Months; and they found Bail accordingly, and were ſet at Liberty.

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The Trial of JOHN PORTEOUS, Captain Lieutenant, of the City-Guard of *Edinburgh*, for Murdering, Slaughtering, Maiming, and Wounding divers of his Majeſty's Subjects, before the Court of Juſticary at *Edinburgh*, in the Month of *July*, 1736. 10. *Geo.* II.

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Trial of Porteous.

Indictment.

THE Indictment charges the Pannel, (the Priſoner) with murdering, ſlaughtering, maiming and wounding his Majeſty's Subjects, by firing with his own Hand, and ordering a Band of armed Men under his Command, to fire upon a Multitude of Innocent People, aſſembled to ſee an Execution in the *Graſs-Market* of *Edinburgh*, on the 14th of *April* then laſt paſt.

It ſets forth more particularly, That at the Time and Place aforeſaid, a Multitude of innocent Perſons, of all Ages and Sexes, being aſſembled to ſee the Execution of *Andrew Wilſon*, who was ſentenced to be hanged; the Priſoner having under his Command a Detachment of 70 armed Men, of the City-Guard, and having conceived a wicked and malicious Purpoſe of deſtroying, maiming, and wounding

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wounding the Inhabitants of the ſaid City, and others aſſembled to ſee the Execution; without any juſt Cauſe or Neceſſity, ordered the ſaid Detachment under his Command, to fire upon the People ſo aſſembled; and ſome of his Men firing over the Heads of the People (as he thought) he with Threats and Imprecations repeated his Commands, calling out to them *to level their Pieces and be damned*; and at the ſame Time levelling his own Piece at one *Charles Husband*, fired at him, and killed him on the Spot: And that by his Command and Example, ſeveral others of the ſaid Guard, fired upon the ſaid Multitude, whereby ſeveral of the Perſons hereafter ſpecified, were killed, maimed, and wounded. And the Indictment further charges, That the Priſoner not contented with this, after he had marched off his Detachment to the Street, called the *Weſtbow*, ordered his Men to face about and fire upon the People, and at the ſame Time fired again with his own Hand; and ſeveral of the Guard firing by his Example, the reſt of the Perſons mentioned in the Indictment were killed and wounded: The Perſons killed at theſe ſeveral Firings being ſix in Number, *viz.* The aboveſaid *Charles Husband*, *Archibald Balantine*, *John Anderſon*, *Alexander Mackneil*, *Margaret Gordon*, and *Henry Graham*; and eleven Perſons were wounded, *viz. Margaret Arthar*, *Jane Peat*, *David Wallace*, *James Philip*, *David Kidd*, *Patrick Spalding*, *James Lyle*, *Alexander Wallace*, *John Miller David Ogilvie*, and *James Nivan:* And the Indictment concludes in the Scots Form, that the Pannel was Guilty, or Actor, Art and Part, of the Crimes aforeſaid, or one or other of them.

The Defence of Porteous.

To which Indictment the Pannel (*Porteous*) pleaded Not guilty; and though conſcious of his Innocence, he could, he ſaid, ſafely reſt his Trial upon the Denial of the Facts, and upon ſuch Proof as he ſhould bring that he was no ways Inſtrumental in the killing or wounding the ſaid Perſons, but did all that was in his Power to prevent and reſtrain the ſaid firing upon the Multitude; yet, as he was adviſed by his Counſel not to omit or abandon any Defence that was competent to him in Law, and by the Law of *Scotland*, the pleading to an Indictment upon ſuppoſed Facts was no legal Submiſſion of ſuch Facts, and he was at liberty to plead any other Exception that lay againſt the Form of the Indictment; or even to plead, that though ſuch firing had proceeded from his Order or Example, yet, even in that Caſe, ſuch firing and the Conſequences thereof was not ſufficient to ſupport the Charge.

Then his Counſel deſired Leave, before they entred upon his Defence, to ſtate his Caſe and offer a ſhort Relation of what they apprehended to be the Cauſe that the Execution of the ſaid *Andrew Wilſon*, was attended with ſuch an unuſual Confluence of People, and was ordered to be guarded and overſeen by ſuch a numerous and unaccuſtomed armed Force.

They ſaid, That *Andrew Wilſon*, along with one *Robertſon* and others, had been ſentenced to Death by their Lordſhips, for robbing one of the Collectors of his Majeſty's Revenue, of conſiderable Sums of the Money of the Publick; and while they lay under this Sentence they were allowed as uſual to go to the Church, adjoining to the Priſon for the Benefit of Divine Service, under the Cuſtody of a ſmall Detachment of the City-Guard. And while the Convicts were thus at Church, *Robertſon*, one of them, found means to eſcape from his Keepers of the Guard, by ſuddenly jumping over a Pew, and getting out of the Door of the Church; his Retreat apparently being favoured by the Mob, or loweſt ſort of the People, he eaſily made his Eſcape, without having been ever ſince overtaken.

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From this Eſcape of *Robertſon*'s, ſo favoured by the Mob, and from ſtrong Surmiſes and Suggeſtions that, at the Execution of *Wilſon*, a Reſcue was intended by the Mob, which indeed there was a reaſonable Ground to apprehend, becauſe the Commons had imbibed a pernicious and abſurd Conceit, as if the Robbing of the Publick Money was a Crime more pardonable than a private Robbery: Therefore it was, as the Pannel apprehended, that the Magiſtrates of the City, from a Senſe of their Duty, to prevent the Execution of the Laws being any further defeated by the Reſcue of *Wilſon*, took the ſtrongeſt Precautions that the Execution of him ſhould be made effectual.

In Conſequence whereof, as would ſeem, the Provoſt of the City ſent for the Pannel, in whom, he muſt take the Liberty to ſay, Confidence was generally put, upon thoſe difficult Occaſions, and told him, That there being great Apprehenſions of a Mob at *Andrew Wilſon*'s Execution, that therefore there was a Neceſſity to be well prepared to prevent their Deſigns; and for that End, that he would have the whole City-Guard to attend at the Execution, he having given Orders to the Town-Treaſurer to furniſh the Men with Powder and Shot, and ſuch other Military Ammunition as might be neceſſary for the Uſe of the Men, in maintaining the Peace of the Town, and ſupporting the Execution of the Laws. And this Conference with the Provoſt happened upon the *Monday* preceeding the Execution of *Wilſon*, which followed on the *Wedneſday* thereafter. But it ſeems the Magiſtrates of the City not thinking even this Precaution ſufficient, upon the *Tueſday* thereafter, the Provoſt ſent the Pannel with a Letter to General *Moyle*, reſiding near the City, and Chief Commander of the Forces in *Scotland*, telling the Pannel, that the Import of this Letter was to deſire from the General an Order for a Party of the Regiment, lying in the Cannon-Gate, to enter the City, (a Thing very uncommon, except in the Caſe of urgent Neceſſity) in order to over-awe the Mob, and thereby maintain the Peace, during the ſaid Execution.

It ſeems this Letter to the General induced him to ſend a verbal Meſſage in return thereto, by a Perſon of known Honour and Veracity, Major *Pool*, of that Regiment, now lying in the Cannon-Gate, who told the Provoſt, that the General wanted to know of him what Part the King's Troops were to act, and what Precautions had been taken for preventing any Inſult or Invaſion that might be made upon the Troops, or what Length theſe Troops might go in the Caſe of Tumult or Diſturbance

To

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To which the Provoſt made Anſwer, That there was no Reaſon to apprehend any Inconveniency would happen to the King's Troops, becauſe he would have them only to parade for a Terror to the Mob, in a Street called the Lawn-Market, removed from the Sight of the Execution, but at a ſmall Diſtance only, where nevertheleſs they would be ready at a Call in caſe of Neceſſity: But that he had ordered the whole Band of the City-Guard to attend at the Execution itſelf, with proper Arms and Ammunition, namely, Slug-ſhot, with orders to repel Force by Force, and even to diſcharge their Arms among the Mob in Caſe of Reſiſtance.

On *Wedneſday*, the Day of the Execution, in the Forenoon, the Pannel attended the Provoſt and told him, That in Obedience to his Commands, the Men were all ordered to be in Readineſs, their Arms put in Order and loaded, whereof the Provoſt approved, and told the Pannel that he was to be ready betwixt two and three in the Afternoon, with his Guard, and not to draw out until the Party of the King's Troops from the Cannon-Gate paſt him, and that ſo ſoon as the King's Troops were drawn up in the Lawn-Market, the Pannel with the City-Guard ſhould forthwith March to the Priſon, and conduct the Priſoner to the Place of Execution, without allowing him firſt to go to the Town's Council-Houſe as uſual; ſtill with Intention, as would ſeem, to prevent an Opportunity of Reſcue or Diſturbance upon that Head. And at this Time in the Forenoon, the Pannel humbly propoſed to the Magiſtrates of the City, that they would ſend a Proclamation through the Town, as a Caution to ſuch innocent unwary People as might by Curioſity be drawn to the Sight of the Execution, warning them of their Danger in Caſe any Diſturbance ſhould happen, or Attack be made upon the Guard. And accordingly *George Lindſey*, one of their Clerks, made a Scroll of the ſaid Proclamation, to be ſent through the Town; but for what Reaſon it was not proclaimed, the Pannel knows not. And at the ſame Time the Pannel remembers ſome one or other of the Common-Council of the City, propoſed, in Caſe of Diſturbance, the reading of the Riot-Act; and for that purpoſe, ſent for a Dozen Copies of the Act to a Bookſeller's Shop, in order to diſtribute them amongſt the proper Officers of the Law authoriſed to read and proclaim ſuch Act: But it ſeems at no Time either of theſe Propoſals were put in Execution, nor at the Time of the ſaid Execution, did any Officer of the Law, authorized to proclaim ſuch Act, attend with the Pannel.

That the Pannel having no Cartridges in his Box when he mounted the Guard, a Corporal furniſhed him with three, with one of which he loaded his Piece, and marched away to Priſon, from whence he conducted the ſaid *Wilſon* to the Scaffold, and ſurrounded the Place with his Detachment.

The Criminal was no ſooner turned off the Ladder, but the City-Bayliffs withdrew, leaving no Officer of the Law to attend with the Pannel: Whereupon the Mob became troubleſome, intending, as he apprehended, to cut down the Criminal and recover him by bleeding, for they preſſed hard upon the Guard, ſtriking them with Sticks, ſeizing their Fire-Arms and Bayonets, and throwing great Stones, one of which cut a Drummer to the Skull, another broke one of his Men's Shoulder-Bones, a Third wounded one of his Men in his Legs, and ſeveral more were wounded and diſabled to do their Duty.

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This Inſolence increaſing, the Pannel ſent a Meſſenger to the Bayliffs, to know if he ſhould ſuffer the Criminal to be cut down, (for no Criminal can be cut down, from a Gibbet, but by Order of a City-Bayliff); and they anſwered, he was to hang a Quarter of an Hour more.

Then the Mob grew very turbulent, and while he was endeavouring to keep them off at one End of the Scaffold, they broke in at the other, and cut the Criminal down; in which Attack it was that ſo many of the Guard were wounded, which ſo alarmed the Pannel, that he confeſſes he did take his Piece and level it at the Mob, threatning to fire amongſt them if they did not leave off attacking his Men, and throwing of Stones: However, he immediately recovered his Piece and did not fire; but one of his Men ſtepped forward immediately after, and paſſing by the Pannel diſcharged his Musket; upon which one of the Crowd dropped, ſuppoſed to be *Charles Husband*, who cut the Criminal down: Another of the Guard near him was going to fire, but the Pannel forbid it, and ſtruck down his Piece; but ſeveral of his Men that were at a Diſtance from him, upon hearing the firſt Shot, fired their Pieces, and he apprehending Miſchief was done, ordered his Men to march off, and was followed by ſome of them in a very diſorderly manner, and he ordered the Serjeants to bring off the reſt, but heard ſome dropping Shots ſtill fired in the Rear; but all this firing from firſt to laſt, by which ſo much Miſchief was done, laſted not above two or three Minutes: Conſidering therefore the Violence of the Mob, and the ſtraggling Situation of the Men of the Guard, they left it to the Court, Whether the Pannel could well have done more for the Safety of the Burgh, having given repeated Orders to the Guard, as would be proved, to reſtrain them from firing, and when he found thoſe Orders ineffectual, marching off his Men with Precipitation? And it was evident to thoſe who ſearched his Piece before the Council, after the Buſineſs was over, that it had never been fired that Day.

The Pannel's Counſel alſo obſerved, That he had often been ſingled out as the fitteſt Perſon to maintain the Peace of the City, by quelling Tumults, and had never diſcovered any imprudent Raſhneſs or cruel Temper hitherto, but had expoſed his Perſon to very great Danger rather than involve the City in Blood, or proceed to Extremities, even when the Law would have entirely juſtified him; nor was it a new Thing for the Private Men of the City-Guard, to take upon them to fire without the Command of their Officers; of which he gave ſeveral Inſtances.

That they might be prompted to fire at this Time, partly by Reſentment, *Robinſon* having

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having eſcaped from them as aforeſaid, and partly from the general Order they heard given by the Magiſtrate, to fire in Caſe of Reſiſtance; for ſeveral of them were heard to ſay before they went to *Wilſon*'s Execution, that now they had got Arms and Ammunition, they would not fail to uſe them, in Caſe they were attacked.

They obſerved further, That, as the Pannel had been employed many Years as the Scourge of the Mob, this might be the Occaſion of drawing on him the Reſentment of the lower ſort of People.

Then the Counſel proceeded to anſwer the Particulars charged in the Indictment: And firſt as to Malice; it could not be preſumed, they inſiſted, that he had any Malice againſt a Multitude of People, of whom he had no Knowledge; it was rather to be ſuppoſed, he proceeded on a Principal of Duty in maintaining the Peace of the Place, and ſupporting the Authority of the Law, and guarding the Execution, which was committed to him by lawful Authority.

In the next Place it was objected, That the Indictment was not laid with ſufficient Certainty, the particular Places in the Street, where the Facts were charged to have been committed, not being ſpecified.

It was objected further, that the attacking the Guard by the Mob was ſo violent, many of the Men being bruiſed and wounded while they were doing their Duty, that the Reſiſtance the Guard made was juſtifiable and agreeable to former Precedents; and then they inſtanced in ſeveral Caſes where ſome had been killed on the like Provocation, and the Authors of their Deaths juſtified by this High Court, particularly in the Caſe of the Centinel who killed *Hugh Frazer* and ſome others, which was laid before the Lords when the Caſe of *Porteous* was under their Conſideration, *and immediately precede this Trial.*

If it was alledged, that the Execution was over before any Tumult or Diſturbance was made by the People, and therefore the firing at them was perfectly unneceſſary; the Counſel for the Pannel anſwered, That the Execution of the Pannel's Duty could not be ſaid to be at an End till the Criminal was actually dead, and ordered to be cut down by lawful Authority; unleſs it was the Pannel's Duty, the Moment the Convict was hung up, to let him be cut down and brought to Life by the Mob, who plainly ſeemed to have that Intention; and the preventing this was evidently the Occaſion of the Scuffle: Nor could it with any Juſtice be affirmed, that the Pannel was not in the Execution of his Duty while he and his Guard remained upon the Spot under Arms; for every Perſon was upon his Duty while he was either going or coming from any lawful Expedition; the Pannel therefore, and the Men under his Command, were in the lawful Execution of their Duty, until they returned and were diſmiſſed from Duty, and then indeed they were reduced to a private Capacity.

They obſerved further, That the Protection of the Hangman, who had received ſeveral Wounds, and was in Danger of being torn in Pieces by the Mob, was a Part of the Pannel's Duty: How then could it be ſaid, that the Pannel could only plead Self-Defence in Excuſe of what was done?

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A private Man indeed, when aſſaulted, muſt retire as far as he can with Safety; but if that was the Caſe of the City-Guard; if they were to betake themſelves to their Heels as ſoon as they were invaded, they were maintained for very little Purpoſe: It would be ſtrange if a Guard, kept for the Maintenance of the Peace of the Capital City, ſhould be allowed to plead no higher Privilege than that of Self-Defence in the ſtricteſt Senſe, when they were upon Duty; this muſt be great Diſcouragement to Perſons in the Service of the Crown or Common-wealth.

And as the Supreme Executive Power was veſted in the King, the Lord Advocate would do well to conſider, how far ſuch an Argument, if preſſed againſt the Pannel, muſt tend to weaken, and even defeat, the Execution of the Laws.

It was rather to be preſumed, that where a Perſon was entruſted with the Execution of the Laws, the ſmalleſt Inſult or Aſſault of him was Criminal; and that every Oppoſition to ſuch an Aſſault was lawful, becauſe no Man was above the Laws; and the Life of the Laws, in which the common Good was concerned, was of more Importance than the Life of any one Man or Number of Men, and ſo ought to be defended at all Hazards: Nor could there be any Inſtance given in this or any other Country, where a Perſon proceeding to Extremities againſt thoſe, who aſſaulted him while he was acting in Execution of the Law, ever ſuffered the Pains libelled.

It had been inſinuated indeed, that the Pannel ought to have read the Riot-Act, whereby the innocent part of the Multitude might have had Time to take Care of their own Safety: But it was to be conſidered, that no Perſon was authorized to read that Act but a Juſtice of Peace, Sheriff, Mayor, Bailiff, or Head Officer; and no Perſon under any of theſe Characters was left with the unfortunate Pannel; but he was abandoned, and left to grapple with Occurrences in the beſt manner his own Diſcretion could ſuggeſt to him.

They ſhewed further, That the reading of the Riot-Act would not have anſwered that Exigency; for he muſt have ſtood with his Hands a-croſs an Hour after the reading that Act, before the Mob would have been expoſed to the Penalties contained in it.

They conclude, That if the Pannel was guilty of the Charge, as laid in the Indictment, they were themſelves of Opinion he deſerved to ſuffer; but if on the other hand it ſhould appear he was entirely innocent of the Blood of thoſe Men wherewith he was charged, they thought his Caſe deſerved ſingular Compaſſion; for if Bonds and Impriſonments, Loſs of Employment and Bread, Obloquy and Reproach of Blood, Guilt and Maſſacre, and conſequently Loſs of Character, be Calamities in Human Life, then had he had as great a Share of them as ever attended Innocence.

Subſcribed *James Grahme*, jun.

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The Reply of his Majeſty's Advocate.

To this Defence of the Pannel's Counſel, the Lord Advocate replied, That the Libel was as particular as the Law required, deſcribing the Street where the Execution was had.

And though it was true, that the Magiſtrates, upon juſt Apprehenſion of Diſorders, and an Attempt to reſcue the Criminal who was ſentenced to die, had ordered Powder and Ball to be diſtributed to the Guard; had obtained the Aſſiſtance of the regular Troops, with an Aſſurance, that, in Caſe of Neceſſity, they ſhould be ordered to fire, and had directed the Pannel at all Hazards to ſupport the Execution, and prevent a violent Reſcue, and told him, that in Caſe of Neceſſity he was to repel Force by Force; thoſe Orders did not juſtify him, except there had been a Neceſſity, except there had been an Attempt to reſcue the Criminal, which could not have been otherwiſe prevented, and unleſs all proper Precautions for diſſipating the Mob otherwiſe had been previouſly uſed to authorize his firing.

That no Order from the Civil Magiſtrate, if any ſuch had been given, could juſtify ſo horrid a Barbarity as the firing upon innocent People; nor was he bound to obey ſuch illegal Orders:

But he had no Orders to fire, unleſs Violence, or an Attempt to Reſcue made it neceſſary; and it was a cruel and unjuſtifiable Act to make uſe of Weapons, that were put into the Hands of the Guard, for the Security of the Peace and of the People, to deſtroy ſo many Innocents.

And though the Pannel would excuſe himſelf, under Pretence that Stones were thrown at the Guard; he admitted the Criminal was cut down before this trifling Provocation happened, and his Duty, as far as concerned the Execution of the Sentence, was over: Nor had he ſo much as alledged any Danger; he was not invaded with Fire-Arms or other mortal Weapons that could endanger the deſtroying Seventy diſciplined Men with loaded Pieces and Bayonets upon them: His Allegations therefore, if true, did not point out the leaſt Neceſſity, and conſequently he could not juſtify himſelf by his Orders.

There happened nothing more than uſual on theſe Occaſions; only ſome Dirt and Stones thrown at the Executioner as was cuſtomary, which might have provoked a cholerick Man to have drubbed ſome of the Actors, but could not juſtify ſlaughtering the Offenders; much leſs could the Impertinence of a few Boys, or other idle People excuſe the firing ſharp ſhot upon an innocent Multitude, whereby many of his Majeſty's Subjects were deſtroyed.

The Pannel had cited a late Reſolution of the Court for ſuſpending a Sentence of the Court of Admiralty, where Soldiers happened to kill in the Execution of their Duty; and he did acknowledge, where a Man has by Law Weapons put into his Hand to be employed, not only in Defence of his Life, when attacked, but in ſupport of the Execution of the Laws, and in Defence of the Property of the Crown or Liberty of any Subject, he, doubtleſs, may uſe thoſe Weapons, not only when his own Life is put ſo far in Danger that he cannot probably eſcape without making uſe of them, but alſo when there is imminent Danger that he may by Violence be diſabled to execute his Truſt without reſorting to the Uſe of thoſe Weapons: But when the Life of the Officer is expoſed to no Danger; when his Duty does not neceſſarily call upon him for the Execution of his Truſt, or for the Preſervation of the Property of the Crown, or the Preſervation of the Property or Liberty of the Subject; to make uſe of mortal Weapons, which may deſtroy his Majeſty's Subjects, eſpecially Numbers of them who may be Innocent; it is impoſſible from the Reſolution of the Court of Juſticiary, hinted at, to expect any Countenance to, or Shelter for the inhuman Act.

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And though the Pannel aſſerted there could be nothing of precedent Malice in the Action, he having no Knowledge of the People that happened to be killed or wounded; yet his Counſel very well knew that firing, and ordering to fire, implyed and was a Proof of Malice, in the Conſtruction both of Law and Reaſon. Whoever wilfully murdered and deſtroyed his Majeſty's Subjects muſt be deemed a Murderer, if his malicious Purpoſe preceeded the Drawing of the Tricker, or giving the Orders, one Moment, as much as if it had been premeditated a whole Year.

As to the Narrative the Pannel had given of his Behaviour, every Circumſtance of it might be true; and yet it might alſo be true, That he with his own Hand fired and killed one or more of the Innocent People, and ordered the Men under his Command to fire.

He might at one Time call out to the Multitude to ſtand off, and threaten to fire, and might at one time ſtrike down the Pieces, and prohibit his Men to fire; and yet he might at another Point of Time, give the Word of Command to fire, and fire the Piece in his Hand: Before he loſt his Temper, he might threaten only, but might afterwards execute what he had threatned.

None of his Witneſſes could pretend they had kept their Eyes ſo ſteadily on the Pannel during the whole Tumult, that they obſerved every Motion he made: The firing of a Shot, The flinging of a Stone, or the extraordinary Behaviour of any of the Multitude, or the Guard, might imperceptibly draw the Eyes and Attention of any Spectator from the Pannel to that new Object, and prevent his ſeeing or hearing what he ſaid or did in the mean Time; and therefore no Witneſs, or Number of Witneſſes, that ſhould take upon them to ſay abſolutely the Pannel did not, at any Period of Time during the Tumult, fire, or give Orders to fire, would be credible: At leaſt they could not be credited againſt ſuch Witneſſes as poſitively atteſted they ſaw and heard him give Orders to fire.

And whereas the Priſoner pretended he bid his Men *Not fire*, but was miſunderſtood by ſome, who apprehended he bid them fire; the ordering his Men *To level their Pieces and be damned*, ſufficiently explained how he would be underſtood as to firing.

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As to that Objection, that his own Piece appeared, Not to have been fired that Day, there was little in it; for another Piece might have been produced to the Magiſtrates inſtead of his own, or he might have taken one of his Men's Pieces and fired it Concluding however, that it was not the Intereſt of the Crown or of the Publick, that an Innocent Man ſhould ſuffer; but it was greatly the Intereſt of Both, that a fair and ſtrict Enquiry be made where the Guilt lies, when a Maſſacre ſo cruel, and ſo dangerous happens; to the End that if the Officer, who has Power put into his Hand for the Preſervation of the Peace, and for the Protection of the People, ſhould, from any unjuſt Motive whatever, make uſe of that Power in Breach of the Laws to the Deſtruction of the People, he may be made an Example, to reſtrain others, in like Circumſtances, from ſuch dangerous Abuſes for the Future.

Signed *Dun. Forbes.*

The Libel found Relevant.

The Court of Juſticiary having conſidered the aforeſaid Debate, found, That the Pannel having at any of the Times and Places libelled, fired among the People, or given Orders to fire; and he or any of the Soldiers having accordingly fired, and any of the Perſons mentioned in the Inſtictment were thereby killed or wounded; or the Pannel's being Art and Part in any of the aforeſaid Crimes; All *ſeparatim* relevant to infer the Pains of Law: But allowed him to produce Evidence of his Behaviour at the ſaid Execution.

He confeſſes the Perſons ſpecified were killed, &c.

The Aſſize or Jury being afterwards ſworn the Pannel judicially confeſſed that the ſeveral Perſons ſpecified in the Indictment were killed and wounded by the firing of the City Guard under his Command.

Evidence of the Proſecutors.

Then the Witneſſes were produced by his Majeſty's Advocate to prove the Facts laid in the Libel: And firſt, *James Drummond*, Merchant of *Edinburgh*, depoſed, That he was preſent at the Execution of *Andrew Wilſon* and after he had hung upon the Gallows about a quarter of an Hour, he ſaw the Executioner go up the Ladder, as the Deponent apprehended to cut him down; upon which he ſaw ſome ſmall Stones thrown by the Mob at the Executioner, ſome whereof he believes might fall upon the Guard: Upon which he ſaw the Pannel advance Weſtward, reſting his Firelock upon his Thigh, as if he was bending it, and afterwards ſaw him raiſing it to his Breaſt, moving it from one Point to another, and ſoon after heard a Shot from the Place where the Pannel was ſtanding: And he did apprehend that Captain *Porteous* fired at that Time, becauſe he ſaw him in a firing Poſture, and immediately heard a Shot, and ſaw a Man in a few Minuets afterwards, when the Mob diſperſed, lying in the Street upon a Line from the Place he ſaw the Captain's Piece directed: And much about the Time the Captain fired, he obſerved one of the Soldiers go out of his Rank Weſtward, beyond the Place where the Captain ſtood, and levelled his Piece; but could not ſee whether he fired it or not.

Sir *William Forbes*, Advocate, depoſed, That after *Wilſon* had hung about 25 Minuets on the Gallows, the Deponent from a Houſe oppoſite to the Gallows, ſaw the Executioner go up a Ladder, (as he thought) to cut down the Deceaſed, and Stones were thereupon thrown at the Executioner; whereupon he retired to the Guards, and the Mob continued throwing of Stones, ſome of which he believed might touch the Guards; and ſoon after he ſaw the Pannel advance Weſtward and fire his Gun among the People, and obſerved the Fire and Smoak iſſue out of his Piece to the beſt of his Obſervation; and this was the firſt Shot the Deponent heard: But he imagined then, that the Pannel fired the Shot high, and that he afterwards heard about Twenty droping Shots.

Mr. *William Fraſer*, Son of the Lord *Saltoun*, who ſtood at the ſame Window, made the like Depoſition as the laſt Witneſs; only he did not ſay, that the Pannel fired the Shot high.

William Urquhart, gave the like Teſtimony as Sir *William Forbes*; only he did not depoſe he ſaw the Smoak or Fire iſſue out of the Pannel's Piece.

James De War teſtified, That he ſaw the Hangman go up ſome Steps of the Ladder, after *Wilſon* had hung ſometime, and ſaw the Mob throw Stones, one of which hurt the Executioner in the Face; whereupon he came down the Ladder, and the Pannel then preſented his Piece, and fired, which was the firſt Shot he heard or ſaw: That he ſaw the Fire of the Powder in the Pan, and heard the Report of the Shot, and that when the Pannel fired, *Wilſon* was cut down by ſome that ſtood at the Foot of the Gallows, and not by the Hangman: And being asked what kind of Cloaths *Porteous* had on, he ſaid, he could not be poſitive, but believed red Cloaths, and was poſitive he knew the Face of Captain *Porteous* when he ſaw him fire.

George Drummond, Eſq; one of the Commiſſioners of the Cuſtoms, depoſed, That fifteen or ſixteen Minuets after *Wilſon* was turned off, the Executioner was going up the Ladder, but ſeveral Stones being thrown at him, he was forced to return, and his Noſe was bloody: That mixing with the Soldiers, the throwing of Stones continued, and ſome fell among them; and he obſerved one of the Soldiers advance before Captain *Porteous* with a Gun, which he preſented, and immediately after the Deponent heard a Shot, which he imagined proceeded from the Soldier's Piece; but did not ſee either Smoak or Fire, and was poſitive this was the firſt Shot that was fired, but he did not think the Stones that were thrown, gave any juſt Cauſe for firing: That at the ſame Time, he ſaw *Porteous* levelling his Piece, and after the firſt Shot, within a Minute, he heard eighteen or twenty: That ſome Minutes after, there was a ſecond Firing: That the dropping Shots in the firſt Firing, were by the Soldiers, who ſtood immediately behind the Pannel, and the Pannel's Face, and all the Soldiers behind him were looking Weſtward.

William Johnſon, Druggiſt, of *Edinburgh* depoſed, that he obſerved the Pannel take a Gun out of a Soldier's Hand, and advance ſome Steps Weſtward, level his Gun, and fire

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it amongſt the multitude, and did obſerve the Smoak come out of the Gun: That this was the firſt ſhot he heard, and was made immediately after the Criminal was cut down, by one ſtanding at the Foot of the Gibbet: That when the Pannel took the Gun out of the Soldiers Hand, he was in a Paſſion, and it was ſome ſhort Time before he was Maſter of the Gun: That to the beſt of his Remembrance the Pannel was cloathed in Red; but he being well acquainted with the Pannel's Face, was poſitive he was the Perſon that took the Gun and fired as aforeſaid; and believes there were about thirty Yards between the Windows where he (the Witneſs) ſtood, and the Pannel to the firſt firing.

Mark Sprot, Skinner, one of the Conſtables of *Edinburgh*, depoſed, That he ſaw *Wilſon* cut down, but did not obſerve any greater Diſturbance than uſual at Executions: But a little after the Criminal was cut down, he obſerved the Pannel advance towards the Soldiers and fire his Piece towards the Weſt, and the Smoak Iſſue out at the Mouth of his Gun; and this was the firſt Shot that was fired. That immediately after a Tall Man in his own Hair, about the Third behind the Pannel, fired his Piece towards the Weſt, but up in the Air over the Heads of the Multitude, and ſeveral dropping Shots followed ſoon after; and when the People fell back and opened, the Deponent obſerved a young Man lying upon the Ground as dead, directly oppoſite to the Place where the Pannel fired.

George-Campbell Wright, of *Edinburgh*, depoſed, That he ſtood at a Window, directly oppoſite to the Gibbet: That a very little after *Wilſon* was cut down, he obſerved the Pannel with four or five of his Men about him; and as he pointed his Piece to and fro towards the Multitude, he obſerved him receive a Stroke by a Stone, thrown from behind the Scaffold, off of which it rebounded and ſtruck him: Whereupon he immediately fired his Piece, but whether this was the firſt Shot or not, he could not tell, there being three or four fired about the ſame Time: But that the Pannel fired he was ſure, for he ſaw the Fire and Smoak iſſue from his Piece; and upon theſe Shots he ſaw a Man fall down on his Back in the Street: That after this, he ſaw the Pannel raiſe his Musket, and put his Hand to his Cartrage-Box, as if he intended to load again; but what followed he did not know, becauſe he immediately loſt Sight of him.

James Bald, Merchant of *Edinburgh*, depoſed, That he ſtood at the ſame Window the laſt Witneſs did; that a little after *Wilſon* was cut down, he ſaw the Pannel advance and fire his Piece to the Weſtward; but ſaw none of the Soldiers near him, nor obſerved any other Fire but his; And before there was any more firing, when the Multitude fell back, he ſaw a Man lying dead towards the Place the Pannel pointed his Piece; and he was ſure the Captain fired, becauſe he ſaw the fire and Smoak iſſue out of his Piece.

Andrew Daw, depoſed, That immediately after *Wilſon* was cut down, the Pannel fired his Piece, and thereupon *Charles Husband*, a Baxter in the Abby, dropt juſt by the Deponent, and the Deponent's Coat was torn in the Shoulder by the ſame Shot; he was ſure it was the Pannel that fired, becauſe he ſaw no other Piece preſented at the ſame Time: And the Deponent was not the Length of an ordinary Room diſtant from the Pannel when he fired; and this was the firſt Shot he heard fired that Day.

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Walter Shergold, of *Edinburgh*, depoſed, That he ſaw Captain *Porteous* fire his Gun, holding the ſame ſtrait-out at the Multitude, and he was not then three Yards from him: That, after he had fired himſelf, he heard the Captain ſay *Fire!* and then ſome other Shots were made: That the Shot the Captain made was the firſt he heard fired, and he was ſo near as to ſee the Fire fly out of the Gun.

John Ritchie and *Thomas Crookſhanks* alſo teſtified, That they ſaw Captain *Porteous* fire among the Multitude.

James Neilſon depoſed, That he ſaw the Smoak iſſue from the Captain's Piece, and that five or ſix Soldiers fired after the Captain, and when the Multitude was beaten off, the Deponent ſaw a Boy with black Hair lying within ten Yards of the Turnpike, where the Deponent ſtood, and he was bloody at the Ear, and he ſaw four other Perſons lying at different Places in the Street.

William Gordon teſtified, He ſaw the Fire and Smoak come out of the Muzzle of the Captain's Piece, which was the firſt Shot that was made, and he heard ſeveral other Shot afterwards.

John Naſmith depoſed, That he heard the Captain ſay ſeveral Times to his Soldiers, *Fire, and be damned!* and at the ſame Time ſaw him advancing with his Piece preſented in his Hand, and ſoon after the Captain had ſaid the Words aforeſaid, he heard ſeveral Shot go off.

David Brown teſtified, That he heard the Captain give his Soldiers Orders to fire, and thereupon ſeveral Shot were made.

Matthew Kidd depoſed, That he ſaw the Captain fire, and afterwards give the Soldiers Orders to fire; and that he called to them to level their Pieces, and he ſaw the Soldiers fire, and the Shot fired by the Captain was either the firſt or the ſecond.

James Maxwell teſtified, That the Mob threw Stones among the Guard, and immediately after the Captain bid the Soldiers *Fire, and be damned!* and that he ſaw the Captain fire the firſt Shot himſelf.

William Douglas teſtified, That there were ſeveral Stones thrown among the Guard, and he heard the Captain ſay to the Soldiers, *Be damned to you, Bougars, Fire!*

Archibald Yeates depoſed, That a little after *Wilſon* was cut down, he ſaw the Captain fire his Piece among the Multitude, and immediately heard him ſay to his Men, *Level your Pieces and fire, and be damned!* whereupon a great many Shot were fired by them, and he ſaw the Captain take a Gun from one of his Men which he fired, and he (the Witneſs) was within ſix Yards of the Captain, when he fired and ſpoke the aboveſaid Words: And that between the Time the Captain fired his own Piece, and his taking the Gun from the Soldier might be about eight Minuets: That at the

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the Time he fired the ſecond Gun, there were ſeveral other Guns fired; and that the ſecond Shot fired by the Captain was near the Place where he fired the firſt.

William Murray teſtified, He obſerved two Soldiers fire their Guns up into the Air, but that the Captain afterwards fired his Gun among the Multitude, whereupon he ſaw a Boy drop; and he heard the Captain call out to the Soldiers, *Damn them for Bougars, why did they not fire even forward, and clean the Street?* and that after the firſt firing, he ſaw the Captain take a Gun out of a Soldier's Hand and fire again, directing it towards a Man he purſued thirty or forty Yards, and upon fireing, he ſaw the Perſon ſo purſued fall down; and being asked, how long he had been dull of Hearing? he anſwered ſeven Years.

James Nicoll depoſed, He ſaw the Captain fire among the Multitude.

William Jameſon teſtified, He ſaw the Captain fire, and heard him order his Men to fire.

John Moffat depoſed, He ſaw the Captain fire his own Piece, and the Soldiers who ſtood behind him fired their Pieces up into the Air; and that he alſo ſaw the Captain take one of the Soldiers Pieces and fire.

John Stewart teſtified, That the Captain took a Gun out of a Soldier's Hand, with which he puſhed back the Multitude, and receiving a Blow as he was in the Rear of his Men, he ſuddenly turned about, and waived his Piece to and again without firing; but a very little after that he turned about all at once, and ſtepping ſome Steps forward, he fired off his Piece Weſtward towards the Crowd.

John Gibb depoſed, That he thought the Captain fired, for he ſaw the Powder flaſh in the Pan, and he heard at the ſame Time the Report of ſeveral Guns, and one *Neil* dropped down at the *Meuſe-well*.

Witneſſes for the Captain.

The Witneſſes produced for Captain *Porteous*.

George Smeiton, Writer, depoſed, That when the Executioner was doing his Duty, he ſaw Captain *Porteous* come off the Scaffold, becauſe the Mob crowded upon the Guard; and one of them endeavoured to graſp the Captain, but a Gentleman in Green Cloaths kept him off, and then the Captain returned to the Scaffold: About the Time the Criminal was cut down the Captain went off the Scaffold again, and Stones were thrown by the Mob at the Hangman and the Guard; after which, he obſerved a Soldier make a Shot, and after this followed three or four Shot more: That the Captain preſented his Piece at the ſame Time, and ſtood pretty near the Soldier that fired firſt.

Thomas Horton, Surgeon of the *Welch* Fuſileers teſtified, That he ſaw ſeveral Stones thrown at the Guard, big enough to kill a Man, and this continued for ſome Time: That while the Criminal was hanging, he ſaw a Man preſs upon the Captain, whereupon he held up his Hand in a threatning Manner: That the Captain had no Gun in his Hand upon the Scaffold, but when he came off he took a Gun from a Soldier, and endeavoured to get his Men together, which he could not well do, they being ſo mixed with the Mob, who continuing to throw Stones, the Captain waived his Piece from Side to Side to frighten them: At the ſame Time a Soldier came up on the Right Hand of the Captain and fired, which was the firſt Shot the Deponent obſerved: That he did not ſee the Captain fire, though he had his Eyes upon him all the Time, and he was very well aſſured he did not fire at that Time; and that afterwards he endeavoured to carry off his Men.

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David Ranine depoſed, That after the firſt Fireings were over, he ſaw the Captain draw off his Men, and heard ſome Soldiers fire in the Rear.

John Clerk, Serjeant of the *Welch* Fuſileers depoſed, That he was ſent by the Captain who commanded the Detachment of the King's Forces in the *Lawn-Market*, to the Place of Execution, to get Orders from the Magiſtrates or Captain *Porteous*; and being upon the Scaffold, he ſaw a Stone thrown at the Executioner which cut his Noſe, and another of the Bigneſs of his two Fiſts at the ſame Time hit the Deponent's Legs: Whereupon he came down from the Scaffold, and ſaw Captain *Porteous* moving his Fuzee to keep off the Crowd, who preſſed upon the Guard, and drove them four or five Yards from the Place where they were poſted: That Captain *Porteous* threatned to fire upon the Mob, but none fired at that Time: He ſaw a Soldier afterwards advance on the right Hand of Captain *Porteous* and fire among the Crowd, which was the firſt Shot he heard; and he ſaw two Soldiers afterwards fire into the Air, and four or five Shots more were made, but he did not ſee Captain *Porteous* fire, or give Orders to fire, though he had his Eyes fixed upon thoſe that fired; and that on the firſt Shot that was fired, he ſaw a Man drop.

Colin Campbell depoſed, That he ſaw Stones thrown at the Hangman and the Guard, and the Captain with his Fuſee keeping off the Mob; and one of the Soldiers being ſtruck with a Stone fired, and another fired immediately after him.

William Meaine, Serjeant of the City-Guard, depoſed, That there were Showers of Stones thrown at the Guard after the Execution, one he ſaw of 3*lb.* weight; the Drummer was cut in the Head with a Stone, and one of the Soldiers had his Shoulder-Blade broke; and before this, the Deponent was drawing off the Men by the Captain's Orders: That he held the Captain's Fuſee, and returned it to him when the Sign was given to cut down *Wilſon*; and it was the ſame Fuſee the Pannel uſed to carry upon Duty.

Alexander Campbell depoſed, He ſaw Stones thrown at the Guard, and two Soldiers ſtep aſide from the reſt and fire, which were the two firſt Shots he heard.

Matthew Howert, a Soldier of the City-Guard depoſed, That a great many Stones were thrown at the Guard; that he ſaw the Captain wave his Piece, but he did not preſent it; but he ſaw two or three Soldiers fire their Pieces into the Air: Then he heard ſome Soldiers ſay, *Fire or we ſhall be knocked down!* and more Stones being thrown, ſeveral of them did fire, though he heard the Captain

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ſay before, *Do not fire!* That he was one of the Soldiers that followed the Captain, and did not ſee him fire as he marched to the *Bow*.

David Martine depoſed, He was one of the City-Guard, and had his Shoulder-Blade disjointed by a Blow of a Stone, before there was any firing, and heard Captain *Porteous* call to the Men *Not to fire*.

William Eyles, Soldier of the City-Guard, teſtified, That he attended the Execution of *Wilſon*, and did not hear Captain *Porteous* give any Orders to fire; but after the firing ſeveral Shots, the Captain called to the Soldiers to fall into their Ranks and follow him, which the Deponent and the reſt did, as they were able.

James Armour, Writer to the Signet, depoſed, That after the Criminal was cut down, the People threw Stones, upon which he heard two or three Shot; and afterwards when the Captain and his Party were retiring, which they did in great Confuſion, the Crowd purſued them, and renewed their throwing of Stones; upon which ſome of the Soldiers marched back eight or ten Paces, and he heard a good number of Shot, which to his Grief he ſaw did great Execution.

John Robinſon Stabler, depoſed, That he heard the Captain ſay, *Fire*, or *I will fire*, he did not know which; and immediately a Man ſtepped 3 or 4 Paces before the Captain, and fired his Piece, and he verily believed that the People who fell near his Cloſs, got their Wounds by that Shot.

George Vint depoſed, He ſaw a Soldier, a black Man, ſtep before the Captain and fire his Piece, whereupon the Captain puſhed him into his Rank, and he did not ſee the Captain fire all the Time.

Alexander Thomſon a Town Officer, depoſed, That the Captain ſent him from the Scaffold to the Magiſtrates to know how long the Criminal ſhould yet hang, and the Magiſtrates anſwered, he ſhould ſtill hang a quarter of an Hour; but before half that Time expired, he was cut down.

Peter Colſtoum depoſed, He ſaw the Captain march with his Men up the *Weſt-Bow*, and ſaw ſeveral in the Rear fire.

John Kennedy Surgeon depoſed, That after the Execution of *Andrew Wilſon*, he attended the following Perſons of the Town-Guard, *viz.* *Alexander Muſhot*, the Spine of whoſe Shoulder-Bone was cruſhed, and *Alexander Braid*, who had a Contuſion in his right Foot, and both of them informed him they received their Hurts at the Execution of *Andrew Wilſon*, and the laſt of them was lame to that Day.

The Verdict. The Aſſize (or Jury) then went out, and having conſidered the Evidence, they all in one Voice found it proven, that the ſaid *John Porteous*, Pannel, fired a Gun among the People aſſembled at the Place of Execution and Time libelled; as alſo that he gave Orders to the Soldiers under his Command to fire, and upon his and their ſo firing, the Perſons mentioned in the Indictment were killed and wounded: And found it proven, that the Pannel and his Guard were attacked and beat, by ſeveral Stones of a conſiderable Bigneſs thrown at them by the Multitude, whereby ſeveral of the Soldiers were bruiſed and wounded.

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Whereupon the Court of Juſticiary decerned and adjudged the ſaid *John Porteous* to be taken from the *Tolbooth* of *Edinburgh*, upon *Wedneſday* the 8th Day of *September* next, to come to the *Graſs-Mercate* of *Edinburgh*, the common Place of Execution of the ſaid Burgh, betwixt the Hours of 2 and 4 of the Clock in the Afternoon of the ſaid Day, and there to be hanged by the Neck upon a Gibbet by the Hands of the Executioner untill he be dead, and ordained all his moveable Goods and Gear to be eſcheat and in-brought to his Majeſty's Uſe; which was pronounced for Doom. *Sentence of Death.*

Sic Sub.

And. Fletcher.
Ja. Mackenzie.
Na. Pringle.
Gilb. Elliot.
} Lords of the Juſticiary.

At a Court held on the 3d of *December*, the Lord Juſtice Clerk produced a Letter from his Grace the Duke of *Newcaſtle*, one of his Majeſty's Principal Secretarys of State, of the following Tenor. *A Letter to reprieve the Captain.*

Whitehall, Auguſt 26, 1736.

My Lords,

Application having been made to Her Majeſty in the Behalf of *John Porteous*, late Captain-Lieutenant of the City-Guard of *Edinburgh*, a Priſoner under Sentence of Death, in the Goal of that City: I am commanded to ſignify to your Lordſhips, Her Majeſty's Pleaſure, That the Execution of the Sentence pronounced againſt the ſaid *John Porteous*, be Reſpited for ſix Weeks, from the Time appointed for his Execution. I am, my Lords, your Lordſhips moſt obedient humble Servant.

Sic Sub. Holles Newcastle.

Directed on the Back thus: To the Right Honourable the Lord Juſtice General, Juſtice Clerk, and other Lords of the Juſticiary at *Edinburgh*.

After which the Lords gave their Warrant for ſtopping the ſaid Execution, prohibiting all Magiſtrates and Officers to put the ſaid Sentence of Death in Execution untill the 20th of *October* next, Upon which Day they were ordered to put the ſaid Sentence in Execution. *He is reprieved.*

But on the 7th of *September*, about 10 at Night, a Body of Men entred the City of *Edinburgh*, ſeized all the Fire-Arms, Battle-Axes, and Fire-Arms belonging to the Town-Guard, and being joined by the Mob within, ſecured all the City-Gates, and with Drums beat the Alarm: Then attempted to break open the Priſon Doors, but not being able, they ſet fire to them, and entring the Priſon, made the Under-keeper open the double Locks of the Apartment where Captain *Porteous* was kept, who begged they would ſpare him till next Day, (the Day firſt appointed for his Execution:) But they hurried him away out of the *Taken out of Priſon, and executed by the Mob.*

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the Priſon about Eleven that Night, marching with lighted Torches before them, and coming to the uſual Place of Execution, they threw a Rope over a Sign-Poſt, and having faſtned it about his Neck, drew him up in his Night-Gown and Cap as they found him; but he getting his Hands between his Neck and the Rope, they let him down again, and the Captain having two Shirts on, they wrapped one of them about his Face, and tied up his Arms in his Night-Gown, and without giving him Time to ſay his Prayers, pulled him up again, where he hung till Day-light the next Morning.

The Arms and Drums being left on the Place of Execution, were found there alſo next Morning; but during the Tumult, Parties of Armed Men with Drums, patroled in the different Streets, to prevent any Surprize by the King's Forces, quartered in the Suburbs; and after the Execution was over, they went to the Lord Provoſt's Houſe (who does not appear to have made any Attempt towards ſuppreſſing the Tumult) and told him they were ſatisfied: After which all was quiet.

The Captain's Petition.

What is moſt remarkable in the Petition of Captain *Porteous*, to the Queen, for Mercy, is That he inſiſts it was not proved that he fired himſelf or commanded his Men to fire; and if he did, That he was aſſaulted firſt by the Mob, and only repelled Force by Force.

The whole Matter being laid before the Houſe of Lords, the laſt Seſſion, a Bill was brought into that Houſe, and paſſed, to diſable *Alexander Wilſon*, late Proveſt of *Edinburgh*, from taking, holding and enjoying any Office, or Place of Magiſtracy in the City of *Edinburgh*, or elſewhere, and for impriſoning the ſaid *Alexander Wilſon* and for aboliſhing the Guard kept up in the ſaid City, commonly called the Town-Guard, and for taking away the Gates of the *Neither Bow-Port* of the ſaid City, and keeping open the ſame.

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A Bill brought into the Houſe of Lords, to puniſh the Proveſt, &c.

Altered by the Commons.

This Bill being ſent down to the Houſe of Commons, received great Alterations there; for the Clauſes for Impriſoning the Provoſt, aboliſhing the City-Guard, and taking away the Gates of the *Neither Bow*, were dropped, upon a Diviſion, when 131 Voted for theſe Alterations, and 130 againſt them; and when the Act paſſed the Commons, It went no further than the diſabling the Provoſt, *Alexander Wilſon*, from holding any Office, and laying a Fine of 2000 *l.* upon the City of *Edinburgh*.

The Reaſon of ſhewing this Reſentment againſt the Provoſt and the City of *Edinburgh*, was their not uſing their beſt Endeavours to ſuppreſs the Mob, either at the Execution of *Andrew Wilſon*, or when Captain *Porteous* was taken out of Priſon and murdered.

Another Act relating to Porteous.

Another Act alſo paſſed this Seſſion for bringing to Juſtice the Perſons concerned in the barbarous Murder of Captain *John Porteous*, and puniſhing ſuch as ſhould knowingly conceal any of the ſaid Offenders.

F I N I S.

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An ALPHABETICAL and CHRONOLOGICAL

TABLE

OF THE

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1668. 20 *Car.* II. — *Bedle, Edward*, — for High Treason. Acquitted. 302

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1663-4. 15 *Car.* II. — *Brewster, Thomas*, Bookseller, — for Misdemeanors. Pilloried, and fined 100 Marks. 294

1703-4. 2 & 3 *An.* — *Briton, Richard*, Gent. — for an Assault and Conspiracy. Fined 100 *l.* 778

1631. 7 *Car.* I. — *Brodway, Giles*, — for a Rape. Executed. 119

1679. 31 *Car.* II. — *Bromwich, Andrew*, Clerk, — for High Treason. Convicted. 364

1603. 1 *Jac.* I. — *Brooke, George*, Esq; — for High Treason. Executed. 45

1603. 1 *Jac.* I. — *Brookesby, Bartholomew*, Esq; — for High Treason. Reprieved. 45

1663-4. 15 *Car.* II. — *Brooks, Nathan*, Bookbinder, — for publishing a Libel. Fined 40 Marks, imprisoned, *&c.* 295

1633. 9 *Car.* I. — *Buckner, William*, — for Licensing a Libel. Fined 50 *l.* 124

1637. 13 *Car.* I. — *Burton, Henry*, Clerk, — for a Libel. Pilloried, Ears cut off, and imprisoned. 128

1681. 33 *Car.* II. — *Busby, George*, Clerk, — for High Treason. Reprieved. 419

1699. 11 *W.* III. — *Butler, Mary*, — for Forgery. Fined 500 *l.* 729

C

1686. 3 *Jac.* II. — *Cambridge*, Proceedings against the University of, for not obeying the King's Mandate. The Vice-Chancellor deprived, *&c.* and the University reprimanded. 566

1680. 32 *Car.* II. — *Care, Henry*, tried for a Misdemeanor, in publishing a Libel. Pilloried, fined, and imprisoned. 387

1660. 12 *Car.* II. — *Carew, John*, Regicide, — for High Treason. Executed. 263

1715. 2 *Geo.* I. — *Carnwath, Robert* Earl of, — for High Treason. Pardoned. 851

Carr. See *Somerset*.

1680. 32 *Car.* II. — *Castlemaine, Roger* Earl of, — for High Treason. Acquitted. 380

1689. 1 *W. & M.* — *Castlemaine*, Earl of, Proceedings of the House of Commons against him. 605

1688. 4 *Jac.* II. — *Cave, Ambrose*, Gent. tried for the Murder of Sir *Charles Pym*. Acquitted. 600

1688. 1 *W. & M.* — *Cavenagh, Maurice*, and others, — for Felony. Acquitted. 891

1680. 33 *Car.* II. — *Cellier, Elizabeth*, — for High Treason. Acquitted. 387

1680. 32 *Car.* II. — *Cellier, Elizabeth*, — for a Misdemeanor. Pilloried, fined, *&c.* 390

1637. 13 *Car.* I. — *Charles* I. King, against *John Hampden*, Esq; for Ship-money. 130

1648. 24 *Car.* I. — *Charles* I. King of *England*, his Trial. Murdered. 214

1586. 28 *Eliz.* — *Charnock, John*, tried for High Treason. Executed. 26

1695. 8 W. III. *Charnock, Robert,* Gent. -- for High Treason. Executed. 642

1682. 34 Car. II. *Charnock, Robert* and *Anne,* --- for Misdemeanors. Convicted; but no Judgment given. 443

1701. 13 W. III. *Churchill, Nicholas,* --- for Piracy. Condemned. 731

1667. 19 Car. II. *Clarendon, Edward* Earl of, impeached of High Treason and other High Crimes. Banished. 299

1603. 1 Jac. II. *Clarke, William,* Priest, tried for High Treason. Executed. 45

1660. 12 Car. II. *Clement, Gregory,* a Regicide, --- for High Treason. Executed. 264

1721. 8 Geo. I. *Coke, Arundel,* Esq: --- for Felony, in maiming Mr. *Crispe.* 866

1692. 4 W. & M. *Cole, John,* --- for the Murder of Dr. *Clench.* Acquitted. 629

1678. 30 Car. II. *Coleman, Edward,* Esq;--for High Treason. Executed. 322

1681. 33 Car. II. *Colledge Stephen,* -- for High Treason. Executed. 419

1686. 2 Jac. II. *Compton, Henry,* D. D. Bishop of *London,* Proceedings against him before the Lords Commissioners for Ecclesiastical Affairs. Suspended. 564

1681. 34 Car. II. *Coningsmark, Charles-John,* Count, tried for the Murder of *Thomas Thynn,* Esq; Acquitted. 439

1702. 1 Annæ. *Constable,* Capt. *John,* for Cowardice, &c. Cashiered, and imprisoned. 747

1660. 12 Car. II. *Cook, John,* Regicide, --- for High Treason. Executed. 265

1696. 8 W. III. *Cook, Peter,* Gent. --- for High Treason. Pardoned. 664

1603. 1 Jac. I. *Copley, Anthoney,* -- for High Treason. Reprieved. 45

1627. 3 Car. I. *Corbet,* Sir *John,* Proceedings upon the *Habeas Corpus* brought by him. 76

1660. 12 Car. II. *Corbet, Miles,* Regicide, taken upon an Outlawry, and executed. 274

1679. 31 Car. II. *Corker, James,* a *Benedictine* Monk, tried for High Treason. Acquitted. 369

1679. 31 Car. II. *Corker, James,* (the same) --- for High Treason. Reprieved. 371

1683. 35 Car. II. *Cornish, Henry,* Esq; Alderman of *London,* --- for a Riot, &c. Fined 1000 Marks. 445

1685. 1 Jac. II. *Cornish, Henry,* (the same) --- for High Treason. Executed. 544

1678. 30 Car. II. *Cornwallis, Charles* Lord, --- for the Murder of *Robert Clark.* Acquitted. 339

1668. 20 Car. II. *Cotton, Edward,* -- for High Treason. Executed. 302

1699. 11 W. III. *Cowper, Spencer,* Esq; --- for the Murder of Mrs. *Sarah Stout.* Acquitted. 709

1696. 8 W. III. *Cranburne, Charles,* --- for High Treason. Executed. 657

Creighton, Robert, Esq; See *Sanquire,* Baron of.

1675. 27 Car. II. *Crispe,* Sir *Nicholas,* and Mr. *Dalmahoy,* Proceedings of the Lords and Commons in Relation to their respective Privileges. 888

1662. 14 Car. II. *Crook, John,* a *Quaker,* tried for not taking the Oaths, Premunire. Sentence not executed. 888

1600. 43 Eliz. *Cuffe, Henry,* tried for High Treason. Executed. 44

1670. 22 Car. II. *Curtis, Jane,* prosecuted for publishing a Libel. Found Guilty. 376

D

Dalmahoy. See *Crispe.*

1710. 9 Annæ. *Dammaree, Daniel,* tried for High Treason. Pardoned. 835

1678. 30 Car. II. *Danby, Thomas* Earl of, Lord High Treasurer, impeached of High Treason, and other High Crimes and Misdemeanors. Pardoned. 327

1647. 23 Car. I. *Darby, Leonard,* tried for Forgery. Fined 400 *l.* imprisoned, &c. 222

1627. 3 Car. I. *Darnel,* Sir *Thomas,* Proceedings upon the *Habeas Corpus* brought by him. 76

1600. 43 Eliz. *Dawers,* Sir *Charles,* tried for High Treason. Beheaded. 44

1600. 43 Eliz. *Davis.* Sir *John,* --- for High Treason. Pardoned. 44

1587. 30 Eliz. *Davison, William,* Esq; --- for a Misdemeanor. Fined 10,000 Marks, and imprisoned. 30

1696. 8 W. III. *Dawson, Joseph,* --- for Piracy. Executed. 705

1683. 35 Car. II. *Deagle, John,* --- for a Riot. Fined 400 Marks. 445

1685. 1 Jac. II. *Delamere, Henry* Lord, --- for High Treason. Acquitted. 549

1703-4. 2 & 3 An. *Denew, Nathanael,* --- for an Assault and Conspiracy. Fined 200 Marks. 778

1715. 2 Geo. I. *Derwentwater, James* Earl of, --- for High Treason. Beheaded. 851

1605. 3 Jac. I. *Digby,* Sir *Everard,* --- for High Treason. Executed. 54

1684. 36 Car. II. *Disney, William,* Esq; --- for High Treason. Executed. 522

1586. 28 Eliz. *Donn, Henry,* --- for High Treason. Executed. 26

1663-4. 15 Car. II. *Dover, Simon,* --- for printing a Libel. Pilloried, and fined 40 Marks. 295

1660. 12 Car. II. *Downes, John,* Regicide, --- for High Treason. Convicted. 272

1702. 2 Annæ. *Drake, James,* M. D. Resolutions of the House of Peers in relation to some Books of his. 766

E

1627. 3 Car. I. *Earl,* Sir *Walter,* Proceedings upon the *Habeas Corpus* brought by him. 76

1668. 20 Car. II. *Earles, John,* tried for High Treason. Acquitted. 302

1683. 35 Car. II. *East-India* Company against *Thomas Sandys.* Judgment for the Plaintiffs. 485

1629. 5 Car. I. *Elliot,* Sir *John,* Knt. Proceedings against him for seditious Words in Parliament, and an Assault upon the Speaker. 100

1615. 13 Jac. I. *Elvis,* Sir *Jervis,* tried for the Murder of Sir *Thomas Overbury.* Executed. 60

1600. 43 Eliz. *Essex, Robert* Earl of, --- for High Treason. Beheaded. 42

1613. 11 Jac. I. *Essex, Robert* Earl of, and the Lady *Frances* his Wife, Proceedings relating to their Divorce. 57

1600. 43 Eliz. *Eviot, Peter,* tried for High Treason in *Scotland.* Lands and Honours forfeited. 39

F

1675. 27 Car. II. *Fagg,* Sir *John,* Proceedings of both Houses of Parliament in the Case between him and Dr. *Thomas Shirley.* 315

1668. 20 Car. II. *Farrel, Richard,* tried for High Treason. Acquitted. 302

1682. 34 Car. II. *Farwell, John,* --- for publishing a Libel. Pilloried, and fined 100 *l.* 442

1652. 4 Car. II. *Faulconer, Richard,*---for Perjury. Convicted; but no Judgment given. 238

1605. 3 Jac. I. *Fawkes, Guy,* --- for High Treason. Executed. 54

1696. 8 W. III. *Fenwicke,* Sir *John,* Proceedings against him, on a Bill to attaint him of High Treason. Beheaded. 674

1678. 30 Car. II. *Fenwicke, John,* Procurator for the *English* Jesuits, tried for High Treason. Reserved for another Trial. 325

1679. 31 Car. II. *Fenwicke, John,* (the same) --- for High Treason. Executed. 346

1685. 1 Jac. II. *Fernley, John,* Barber-Surgeon, --- for High-Treason. Executed. 542

1706. 5 Annæ. *Fielding, Robert,* Esq; --- for Bigamy. Convicted of Felony. Pardoned. His Marriage with the Dutchess of *Cleveland* annulled. 806

1643. 19 Car. I. *Fiennes,* Col. *Nathanael,* --- for Cowardice. Sentenced to be beheaded; but pardoned. 192

1640. 16 Car. II. *Finch, John* Lord, Baron of *Fordwich,* Lord Keeper of the Great Seal, impeached of High Treason. Fled. 158

1681. 33 Car. II. *Fitz-Harris, Edward,* Esq; tried for High Treason. Executed. 404

1631. 7 Car. I. *Fitz-Patrick, Lawrence,* --- for Sodomy. Executed. 120

1660. 12 Car. II. *Fleetwood, George,* Regicide, --- for High Treason. Reprieved. 272

1701. 1 Annæ. *Fogg,* Captain *Christopher,* --- for Cowardice, &c. Suspended. 747

1668. 20 Car. II. *Ford, William,* --- for High Treason. Acquitted. 302

1696. 8 W. III. *Forseeth, Edward,* --- for Piracy. Executed. 705

1603-4. 1 Jac. I. *Fortescue,* Sir *John,* the Case between him and Sir *Francis Goodwin,* about the Return of a Knight of the Shire. 49

1654. 6 Car. II. *Fox, Somerset,* tried for High Treason against *Oliver Cromwell.* Pardoned. 249

1716. 3 Geo. I. *Francia, Francis,* --- for High Treason. Acquitted. 854

1615. 13 Jac. I. *Franklin, James,* Apothecary, --- for the Murder of Sir *Thomas Overbury.* Executed. 61

1683. 35 Car. II. *Freeman, Richard,* --- for a Riot, &c. Fined 300 Marks. 445

1695. 8 W. III. *Friend,* Sir *John,* Knt. --- for High Treason. Executed. 648

1702. 1 Annæ. *Fuller, William,* --- for publishing scandalous Libels. Pilloried, fined 1000 Marks, and imprisoned. 746

G

1586. 28 Eliz. *Gage, Robert,* tried for High Treason. Executed. 26

1660. 12 Car. II. *Garland, Augustine,* Regicide, --- for High Treason. Imprisoned, and confiscated. 272

1606. 3 Jac. I. *Garnet, Henry,* Superior of the Jesuits, --- for High Treason. Executed. 55

1679. 32 Car. II. *Gascoigne,* Sir *Thomas,* Bart. --- for High Treason. Acquitted. 376

1679. 31 Car. II. *Gavan,* (alias *Gawen*) *John,* a Jesuit, --- for High Treason. Executed. 346

1685. 1 Jac. II. *Gaunt, Elizabeth,* --- for High Treason. Burned. 543

1654. 6 Car. II. *Gerhard, John,* -- for High Treason against *Oliver Cromwell.* Beheaded. 249

1692. 4 W. & M. *Germaine,* Sir *John,* an Action of Trespass on the Case brought against him by *Henry* Duke of *Norfolk.* 100,000 *l.* Damages laid, 100 Marks given. 730

1651. 3 Car. II. *Gibbons, John,* tried for a pretended High Treason. Executed. 235

1662. 14 Car. II. *Gibbs, Nathanael,* --- for High Treason. Executed. 289

1719. 5 Geo. I. *Gilbert, Jeffery,* Esq; Lord Chief Baron, Proceedings against him, and other Barons of the *Exchequer* in *Ireland.* 869

1680. 13 Car. II. *Giles, John,* tried for an Assault. Pilloried, fined 500 *l.* imprisoned, &c. 388

1683. 35 Car. II. *Goodenough, Richard,*--- for a Riot. Fined 500 Marks. 445

1686. 2 Jac. II. *Goodwin, Arthur,* against Sir *Edward Hales,* Bart. for not taking the Oaths. 558

1603-4. 1 Jac. I. *Goodwin,* Sir *Francis,* the Case between him and Sir *John Fortescue,* about the Return of a Knight of a Shire. 49

1600. 2 W. & M. *Gowrie, John* late Earl of, his Attainder in the Parliament of *Scotland* for High Treason. Estates and Honours forfeited. 39

1690. 2 W. & M. *Grahame,* Sir *Richard,* Bart. Viscount *Preston,* tried for High Treason. Pardoned. 606

Grant;

1605. 3 Jac. I. *Grant, John,* --- for High Treason. Executed. 54

1678-9. 31 Car. II. *Green, Robert,* --- for the Murder of Sir *E. B. Godfrey.* 338

1705. 4 Annæ. *Green,* Capt. *Thomas,* and his Crew,--- for Piracy in *Scotland.* Executed. 800

1668. 20 Car. II. *Green, William,* --- for High Treason. Acquitted by a special Verdict. 302

1682. 34 Car. II. *Grey* of *Werk, Ford* Lord, --- for a Misdemeanor. Convicted, but no Judgment given. 443

1683. 35 Car. II. *Grey* of *Werk, Ford* Lord, --- for a Riot, *&c.* Fined 1000 Marks. 455

1662. 14 Car. II. *Grey, Isaac,* a *Quaker,* for not taking the Oaths. Premunire. Sentence not executed. 888

1678. 30 Car. II. *Grove, John,* --- for High Treason. Executed. 325

H

1660. 12 Car. II. *Hacker, Francis,* Regicide, tried for High Treason. Executed. 270

1686. 2 Jac. II. *Hales,* Sir *Edward,* at the Suit of *Arthur Goodwin,* for neglecting to take the Oaths. 558

1588. 31 Eliz. *Hales,* Mr. tried for seditious Libels. Fined and imprisoned. 33

1701. 13 W. III. *Halifax, Charles* Lord, impeached of High Crimes and Misdemeanors. Impeachment dismissed. 738

1648-9. 1 Car. II. *Hamilton, James* Duke of, tried for High Treason by the Usurpers. 219

1627. 3 Car. I. *Hampden,* Sir *Edmund,* Proceedings upon the *Habeas Corpus* brought by him. 75

1637. 13 Car. I. *Hampden, John,* Esq; the Trial between King *Charles* I. and him, upon the assessing Ship-money. Judgment given against him. 130

1684. 36 Car. II. *Hampden, John,* Esq; tried for an High Misdemeanor. Fined 40,000 *l.* 495

1685. 1 Jac. II. *Hampden, John,* Esq; (the same) --- for High Treason. Pardoned. 549

1679. 31 Car. II. *Harcourt, William,* --- for High Treason. Executed. 346

1679. 31 Car. II. *Harris, Benjamin,* Bookseller, --- for a Misdemeanor. Pilloried, fined 500 *l. &c.* 375

1647. 23 Car. I. *Harris, John,* --- for Forgery. Fined 400 *l.* imprisoned, *&c.* 222

1692. 4 W. & M. *Harrison, Henry,* Gent. --- for the Murder of Dr. *Clench.* Executed. 629

1638. 14 Car. I *Harrison, Thomas,* Clerk, --- for a Contempt. Fined 5000 *l.* imprisoned, *&c.* 158

1660. 12 Car. II. *Harrison, Thomas,* Regicide, --- for High Treason. Executed. 261

1702. 1 Annæ. *Hartwell, John,* --- for assisting in a forcible Marriage. Acquitted. 749

1660. 12 Car. II. *Harvey, Edmund,* Regicide, --- for High Treason. Pardoned. 271

1702. 2 Annæ. *Hathaway, Richard,* -- as an Impostor. Convicted. 758

1702. 2 Annæ. *Hathaway, Richard,* (the same) for a Riot and Assault. Pilloried, fined, and imprisoned. 758

1701. 13 W. III. *Haversham, John,* Lord, the Charge of the House of Commons against him, for reflecting Words, dismissed. 740

1711. 10 Annæ. *Haunt, William,* tried for Murder. Acquitted. 893

1668-9. 20 Car. II. *Hawkins, Robert,* Clerk, tried for Felony acquitted. 303

1684. 36 Car. II. *Hayes, Joseph,* Citizen of *London,* --- for High Treason. Acquitted. 505

1660. 12 Car. II *Hertford, William* Marquis of, restored to the Title of Duke of *Somerset.* 18

1620. 19 Jac. I. *Heveningham,* Sir *John,* Proceedings upon the *Habeas Corpus* brought by him. 76

1660. 12 Car. II. *Heveningham, William,* Regicide, tried for High Treason. Condemned; but no Order given for his Execution. 273

1658. 10 Car. II. *Hewet, John,* D. D. for a pretended High Treason. Beheaded. 259

1571. 14 Eliz. *Hickford, Robert,* --- for High Treason. Pardoned. 25

1678-9. 31 Car. II. *Hill, Laurence,* --- for the Murder of Sir *E. B. Godfrey.* Executed. 333

1662. 14 Car. II. *Hind, James* o --- for High Treason. Pardoned. 289

1629. 5 Car. I. *Holles, Denzil,* Esq; Proceedings against him for seditious Words in Parliament, and an Assault upon the Speaker. 100

1615. 13 Jac. I. *Holles,* Sir *John,* Proceedings against him in the *Star-Chamber* for traducing Publick Justice. Fined 100 *l.* and imprisoned. 884

1684. 36 Car. II. *Holloway, James,* Proceedings, on the Outlawry against him, for High Treason. Executed. 507

1683. 35 Car. II. *Hone, William,* tried for High Treason. Executed. 455

Howard, Philip. See *Arundel,* (Earl of).

Howard, Thomas. See *Norfolk,* (Duke of).

1701. 13 W. III. *Howe, James,* tried for Piracy. Condemned. 731

1660. 12 Car. II. *Hulet, William,* a Regicide, --- for High Treason. Convicted; but not condemned, the Evidence being held deficient. 270

1701. 10 W. III. *Hurly, Patrick,*-- for Perjury, *&c.* Fined 100 *l.* 892

I

1662. 14 Car. II. *James, John,* tried for High Treason. Executed. 287

1683. 35 Car. II. *Jekyll, John,* --- for a Riot, *&c.* Fined 200 Marks. 445

1701. 13 W. III. *Jenkyns, William,* --- for Piracy. Acquitted. 731

1676. 27 Car. II. *Jenks, Francis,* his Commitment for seditious Words. Admitted to Bail, and further Prosecution dropped. 317

1683. 35 Car. II. *Jenks, Francis,* tried for a Riot. Fined 300 Marks. 445

1686. 2 Jac. II. *Johnson, Samuel,* --- for a Misdemeanor Fined 500 Marks, degraded, pilloried, and whipped. 564

Johnson. See *Kelly.*

1682. 34 Car. II. *Jones, David,* tried for a Misdemeanor Convicted; but no Judgment given. 443

1586. 28 Eliz. *Jones, Edward,* --- for High Treason. Executed. 26

1682. 34 Car. II. *Jones, Francis,* --- for a Misdemeanor. Convicted; but no Judgment given. 443

1660. 12 Car. II. *Jones, John,* a Regicide, --- for High Treason. Executed. 264

1662. 34 Car. II. *Jones, Rebecca,* --- for a Misdemeanor. Acquitted. 443

1689. 1 W. & M. *Jones,* Sir *Thomas,* Proceedings of the House of Commons against him. 636

1388. 11 Ric. II. *Ireland, Robert Vere* Duke of, Proceedings against him, for High Treason. He fled. 1

1678. 30 Car. II. *Ireland, William,* tried for High Treason. Executed. 325

K

1664. 16 Car. II. *Keach, Benjamin,* tried for a Misdemeanor. Pilloried; fined 20 *l. &c.* 296

1723. 9 Geo. I. *Kelly,* alias *Johnson, George,* the Attainder of him for a Treasonable Conspiracy. Imprisoned for Life. 872

1695. 7 W. & M. *Kendal, Thomas,* and *Richard Roe;* committed for High Treason. Bailed. 891

1715. 2 Geo. I. *Kenmure, William* Viscount, tried for High Treason. Beheaded. 851

1688. 4 Jac. II. *Ken, Thomas,* D.D. Bishop of *Bath* and *Wells,* --- for a Libel. Acquitted. 574

1679. 31 Car. II. *Kerne, Charles,* Clerk, -- for High Treason. Acquitted. 364

1683. 35 Car. II. *Key, Robert,* --- for a Riot. Fined 100 Marks. 445

1605. 3 Jac. I. *Keyes, Robert,* --- for High Treason. Executed. 54

1695. 8 W. III. *Keyes, Thomas,* --- for High Treason. Executed. 642

1701. 13 W. III. *Kidd,* Capt. *William,* -- for Murder. Convicted. 730

1701. 13 W. III. *Kidd,* Capt. *William,* (the same) --- for Piracy. Executed. 731

1695. 8 W. III. *King, Edward,* Gent. -- for High Treason. Executed. 642

1701. 1 Annæ. *Kirby,* Colonel *Richard,* --- for Cowardice, *&c.* Shot to Death. 747

1696. 8 W. III. *Knightley, Alexander,* Gent. -- for High Treason. Executed. 663

1588. 31 Eliz. *Knightley,* Sir *Richard,* --- for a Libel. Fined 2000 *l.* and imprisoned. 33

1697. 8 W. III. *Knollys, Charles,* Esq; commonly called Earl of *Banbury,* Proceedings against him, for the Murder of *Philip Lawson,* Gent. 708

1679. 31 Car. II. *Knox, Thomas,* tried for a Misdemeanor. Fined 200 Marks, pilloried, and imprisoned. 366

L

1688. 4 Jac. II. *Lake, John,* D. D. Bishop of *Chichester,* tried for a Libel. Acquitte. 574

1701. 13 W. III. *Lamley, Robert,* --- for Piracy. Acquitted. 731

1679. 31 Car. II. *Lane, John,* -- for a Misdemeanor. Fined 100 Marks, pilloried, and imprisoned. 366

1679. 31 Car. II. *Langborne, Richard,* Esq; --- for High Treason. Executed. 352

1668. 20 Car. II. *Latimer, Richard,* --- for High Treason. Pardoned. 302

1643. 19 Car. I. *Laud, William,* Lord Archbishop of *Canterbury,* -- for High Treason. Beheaded. 195

1722. 9 Geo. I. *Layer, Christopher,* Esq; -- for High Treason. Executed. 868

1600. 43 Eliz. *Lea,* Capt. *Thomas,* --- for High Treason. Executed. 43

1679. 31 Car. II. *Lewis, David,* Priest, -- for High Treason. Executed. 340

1696. 8 W. III. *Lewis, James,* --- for Felony and Piracy. Executed.

1637. 13 Car. I. *Lilburn, John,* --- for publishing seditious Books. Pilloried, whipped, and fined 500 *l.* 156

1649. 1 Car. II. *Lilburn,* Lieut. Col. *John,* (the same) for High Treason. Acquitted. 225

1660. 12 Car. II. *Lilburne, Robert,* a Regicide,---for High Treason. Condemned; but Execution suspended. 272

1668. 20 Car. II. *Limerick, Thomas,* --- for High Treason. Executed. 302

1704. 3 Annæ. *Lindsay, David,* Gent. -- for High Treason. Pardoned. 789

1685. 1 Jac. II. *Lisle, Alice,* Widow, -- for High Treason. Beheaded. 537

1688. 4 Jac. II. *Lloyd, William,* D. D. Bishop of St. *Asaph,* -- for a Libel. 574

1702. 2 Annæ. *Lloyd, William,* D. D. (the same) Bishop of *Worcester,* Proceedings of the House of Commons against him and his Son. 767

1701. 13 W. III. *Loffe, Gabriel,* tried for Piracy. Condemned. 731

1609. 7 Jac. I. *Logan, Robert,* -- for High Treason. 56

1682-3. 35 Car. II. *London,* the Trial between the King and the City of, on a *Quo Warranto.* Charter forfeited. 447

1629. 5 Car. I. *Long, Walter,* Esq; Proceedings against him, on bringing his Writ of *Habeas Corpus* to be bailed in the *King's-Bench.* Imprisoned. 93

1651. 3 Car. II. *Love, Christopher,* Clerk, tried for a pretended High Treason. Beheaded. 234

1696. 8 W. III. *Lowick,* Major *Robert,* -- for High Treason. Executed. 659

1615. 13 Jac. I. *Lumsden,* Mr. Proceedings against him for traducing Publick Justice.

tice. Fined 2000 Marks, and impriſoned. 884

1679. 31Car. II. *Lumſden, Alexander*, a PopiſhPrieſt, tried for High Treaſon. Acquitted. 369

M

1735. 9 Geo. II. *Mac-Adams, Thomas*, tried for Murder. Condemned; but the Sentence ſuſpended. 899

1725. 10 Geo. I. *Macclesfield, Thomas* Earl of,-- for High Crimes and Miſdemeanors. Fined 30,000 *l.* 874

1644. 19 Car. I *Macguire, Connor* Lord, --- for High Treaſon. Executed 213

1687. 3 Jac. II. *Magdalen-College* in *Oxford*, Proceedings againſt them. Preſident, Fellows, *&c.* expelled. 568

1681. 33Car. II. *Maitland, Charles*, Lord *Halton*, -- for Perjury. Acquitted. 890

1603. 1 Jac. I. *Markham*, Sir *Griffin*, Knt. --- forHighTreaſon. Reprieved. 45

1679. 31Car. II. *Marſhall, William*, a *Benedictine* Monk --- for High Treaſon. Acquitted. 359

1679. 31Car. II. *Marſhall, William*, (the ſame) -- for High Treaſon. Reprieved. 369

1660. 12Car. II. *Marten, Henry*, a Regicide, --- for High Treaſon. Reprieved. 271

1699. 11W. III. *Marſon, John*, Gent. --- for the Murder of Mrs. *Sarah Stout*. Acquitted. 709

1696. 8 W. III. *May, William*, --- for Felony and Piracy. Executed. 705

1670. 22Car. II. *Mead, William*, --- for a Riot, and Conſpiracy. Acquitted. 306

1600. 43 Eliz. *Merrick*, Sir *Gilly*, --- for High Treaſon. Executed. 44

1703-4. 2 & 3 An. *Merriam, John*, Gent. --- for an Aſſault and Conſpiracy. Not guilty. 778

1668. 20Car. II. *Meſſenger, Peter*, --- for High Treaſon. Executed. 302

1660. 12Car. II. *Meyne, Simon*, a Regicide, --- for High Treaſon. Reprieved. 273

1660. 12Car. II. *Mildmay*, Sir *Henry*, a Regicide,-- Drawn on a Sledge to the Gallows, and his Eſtate confiſcated. 274

1660. 12Car. II. *Millington, Gilbert*, aRegicide,--for High Treaſon. Reprieved. 272

1677-8. 29Car. II. *Mitchel, James*, -- for anAttempt to murder the Archbiſhop of St. *Andrews*. Executed. 331

1663. 15Car. II. *Moders*, alias *Stedman, Mary*, (the *German* Princeſs) --- for Bigamy. Acquitted. 291

1692. 4W. & M. *Mohun, Charles* Lord, --- for the Murder of *William Mountford*, Gent. Acquitted. 629

1699. 11W. III. *Mohun, Charles* Lord, (the ſame) and others, -- for the Murder of Captain *Richard Coote*. Acquitted. 629

1600. 43 Eliz. *Moncreif, Hugh*, the Attainder of him for High Treaſon. Lands and Honours forfeited. 39

1658. 10 Car. II. *Mordant, John*, Eſq; tried for a pretended High Treaſon. Acquitted. 260

1535. 26H.VIII *More*, Sir *Thomas*, --- for High Treaſon. Beheaded. 10

1666. 18Car. II. *Morley, Thomas* Lord, --- for the Murder of Mr. *Haſtings*. Manſlaughter. 297

1649. 1 Car. II. *Morris*, Col. *John*, --- for High Treaſon, by theUſurpers Judges. Executed. 223

1649. 23 Car. I. *Morris*, alias *Poyntz, John* and *Mary* his Wife, --- for Forgery. Fined, impriſoned, *&c.* 222

1661. 13Car. II. *Mounſon*, Lord, a Regicide degraded, drawn on a Sledge to *Tyburn*, and his Eſtate confiſcated. 274

1701. 13W. III. *Mullens, Darby*, --- for Piracy. Pardoned. 731

N

1715. 2 Geo. I. *Nairn, William* Lord, tried for High Treaſon. Pardoned. 851

1656. 8 Car. II. *Naylor, James*, --- for Blaſphemy. Pilloried, whipped, branded, *&c.* 252

1684. 36Car. II. *Neal, Thomas*, Eſq; a Trial in Ejectment between him and the Lady *Ivy*. Verdict for the Plaintiff. 890

1388. 11Ric. II. *Nevil, Alexander*, Archbiſhop of *York*, Proceedings againſt him for High Treaſon. He fled. 1

1715. 2 Geo. I. *Nithiſdale, William* Earl of, tried for High Treaſon. He made his Eſcape. 851

1571. 14 Eliz. *Norfolk, Thomas* Duke of, --- for High Treaſon. Beheaded. 21

1691. 1692. 1700. *Norfolk, Henry* and *Mary* Duke and Dutcheſs of, Proceedings for a Divorce. A Divorce obtained. 729

O

1684. 36Car. II. *Oates, Titus*, Clerk, Proceedings againſt him upon the Statute *de Scand' Mag'*. Damages 100,000 *l.* 511

1685. 1 Jac. II. *Oates, Titus*, (the ſame) two Trials of him for Perjury. Fined, pilloried, whipped, *&c.* 523, 530

1615. 13 Jac. I. *Ogilvie, John*, tried for High Treaſon. Executed. 65

1660. 12Car. II. *Okey, John*, a Regicide, taken upon an Outlawry for High Treaſon, and executed. 274

1413. 1 Hen. V. *Oldcaſtle*, Sir *John*, Lord *Cobham*, tried for Hereſy. Hanged, and burned. 9

1693. 5W. & M. *Oldys, William*, L.L.D. the King's Advocate, Proceedings againſt him, for refuſing to proſecute Traitors and Pirates. Diſplaced. 641

1701. 13W. III. *Orford, Edward* Earl of, impeached of a Miſdemeanor. Acquitted. 736

1701. 13W. III. *Owens, Abel*, tried for Piracy. Condemned. 731

1717. 3 Geo. I. *Oxford, Robert* Earl of, and Earl *Mortimer*, impeached of High Treaſon, and High Crimes. Acquitted. 856

P

1682. 34Car. II. *Pain, William*, tried for Libels. Fined. 442

1702. 1 Annæ. *Pakington*, Sir *John*, his Complaint in the Houſe of Commons againſt the Biſhop of *Worceſter*. 767

1684. 36Car. II. *Papillon, Thomas*, Eſq; at the Suit of Sir *William Pritchard*, for a falſe Arreſt. Damages 10,000 *l.* Coſts 4 Marks. 513

1603. 1 Jac. I. *Parham*, Sir *Edward*, Knt. tried for High Treaſon. Reprieved. 45

1679. 31Car. II. *Paris, Charles*, --- for High Treaſon, in being a *Romiſh* Prieſt. Condemned; but reprieved. 369

1701. 13W. III. *Parrot, Hugh*, --- for Piracy. Reprieved. 731

1584. 26 Eliz. *Parry, William*, L. L. D. forHigh Treaſon. Executed. 25

1686. 2 Jac. II. *Peachel, John*, D. D. Vice-Chancellor of *Cambridge*, ſuſpended. 566

1689. 1W. & M. *Pemberton*, Sir *Francis*, a Juſtice of the *King's-Bench*, Proceedings of the Houſe of Commons againſt him. 636

1678. 30Car. II. *Pembroke* and *Montgomery, Philip* Earl of, tried for the Murder of *Nathanael Cony*, Gent. Manſlaughter. 319

1670. 22Car. II. *Penn, William*, --- for a Riot and Conſpiracy. Acquitted. 306

1660. 12Car. II. *Pennington, Iſaac*, a Regicide, --- for High Treaſon. Reprieved. 271

1655. 7 Car. II. *Penruddock*, Col. *John*, --- for a pretended High Treaſon. Beheaded. 250

1695. 8 W. III. *Perkins*, Sir *William*, Knt. -- for High Treaſon. Executed. 650

1592. 34 Eliz. *Perrot*, Sir *John*, -- for High Treaſon. Reprieved from Time to Time, till he died in the *Tower*. 38

1660. 12Car. II. *Peters, Hugh*, a Regicide, --- for High Treaſon. Executed. 266

1662. 14Car. II. *Philips, George*, -- for High Treaſon. Executed. 289

1678. 30Car. II. *Pickering, Thomas*, --- for High Treaſon. Executed. 825

1683. 36Car. II. *Pilkington, Thomas*, Sheriff of *London*, --- for a Riot, *&c.* Fined 500 *l.* 445

1683. 35Car. II. *Player*, Sir *Thomas*, Chamberlain of *London*,--- for a Riot. Fined 500 Marks. 445

1723. 9 Geo. I. *Plunket, John*, the Attainder of him for a treaſonable Conſpiracy. 872

1681. 33Car. II. *Plunket*, Dr. *Oliver*, tried for High Treaſon. Executed. 415

1719. 5 Geo. I. *Pocklington, John*, Eſq; Baron of the *Exchequer* in *Ireland*, Proceedings againſt him, in the Cauſe of *Anneſley* and *Sherlock*. 869

De La Pole, Michael. See *Suffolk* (Earl of).

1654. 6 Car. II. *Pordage John*, D. D. proſecuted for Heretical Doctrines. Ejected. 250

1736. 10Geo. II. *Porteous*, Capt. *John*, tried for Murder. Condemned; but reprieved; Executed by the Mob. 902

1701. 13W. III. *Portland, William* Earl of, Proceedings againſt him for High Miſdemeanors. Acquitted. 736

1660. 12Car. II. *Potter, Vincent*, a Regicide, tried for High Treaſon. Reprieved. 272

Poyntz. See *Morris*.

1680. 13Car. II. *Preſſicks, Mary*, tried for High Treaſon. Acquitted. 389

Preſton, Viſcount. See *Grahme*.

1679. 32Car. II. *Price, Anne*, tried for Subornation of Perjury. Fined 200 *l.* 372

1689. 1W. & M. *Price, John*, Eſq; and 100 other Proteſtants, arraigned for High Treaſon. Diſmiſſed. 606

1684. 36Car. II. *Pritchard*, Sir *William*, againſt *Thomas Papillon*, Eſq; Verdict for the Plaintiff. Damages 10,000 *l.* Coſts 4 Marks. 513

1633. 9 Car. I. *Prynne, William*, Eſq; tried for a Libel. Degraded, pilloried, and fined 5,000 *l.* 124

1637. 13 Car. I. *Prynne, William*, Eſq; (the ſame) --- for another ſeditious Libel. Pilloried, Ears cut off, and impriſoned. 128

1710. 9 Annæ. *Purchaſe, George*, --- for High Treaſon. Pardoned. 846

Q

1704. 3 Annæ. *Quelch, John*, &c. tried for Piracy, Robbery, and Murder in *New England*. Executed. 789

R

1603. 1 Jac. I. *Raleigh*, Sir *Walter*, tried for High Treaſon. Beheaded. 47

1679. 31Car. II. *Reading, Nathaniel*, Eſq; --- for a Miſdemeanor. Pilloried, fined, and impriſoned. 341

1721. 8 Geo. I. *Reaſon, Hugh*, --- for the Murder of *Edward Lutterell*, Eſq; Manſlaughter. 865

1660. 12Car. II. *Regicides, Twenty-nine*,-- forHigh Treaſon. 261

1668. 20Car. II. *Richardſon, John*, --- for High Treaſon. Acquitted. 302

1685. 1 Jac. II. *Ring, William*, ---for High Treaſon. Executed. 543

1660. 12Car. II. *Roe, Owen*, a Regicide, -- forHigh Treaſon. Reprieved. 272

Roe. See *Kendal*.

1699. 11W. III. *Rogers, William*, Gent. --- for the Murder of Mrs. *Sarah Stout*. Acquitted. 709

1605. 3 Jac. I. *Rookwood, Ambroſe*, --- for High Treaſon. Executed. 54

1696. 8 W. III. *Rookwood, Ambroſe*, Gent. --- for High Treaſon. Executed. 654

1684. 36Car. II. *Roſewell, Thomas*, --- for High Treaſon. Pardoned. 516

1683. 35 Car. II. *Rouſe, John*, -- for High Treaſon. Executed. 455

Rumley,

1679. 31Car. II. *Rumley, William*, a *Benedictine* Monk, --- for High Treason. Acquitted. 359

1683. 35Car. II. *Russel, William* Lord, -- for High Treason. Beheaded. 457

1679. 31Car. II. *Russel, William*, a *Romish* Priest, --- for High Treason. Reprieved. 369

1600. 43 Eliz. *Ruthuen, Alexander* and *Henry*, the Attainder of them, for High Treason, in *Scotland*. Lands and Honours forfeited. 39

S

1709. 8 Annæ. *Sacheverell, Henry*, D. D. tried for High Crimes and Misdemeanors. Silenced for three Years. 807

1684. 36Car. II. *Sacheverell, William*, Esq; and others, --- for a Riot. Fined 500 Marks. 498

1586. 28 Eliz. *Salisbury, Thomas*, --- for High Treason. Executed 26

1688. 4 Jac. II. *Sancroft*. Dr. *William*, Archbishop of *Canterbury*, --- for a Libel. Acquitted. 574

1683. 35Car. II. *Sandys, Thomas*, at the Suit of the *East-India* Company. Judgment for the Plaintiffs. 484

1612. 10 Jac. I. *Sanquire, Robert* Baron of, tried for the Murder of *John Turner*. Executed. 57

1586. 28 Eliz. *Savage, John*, --- for High Treason. Executed. 26

1660. 12Car. II. *Scot, Thomas*, a Regicide, --- for High Treason. Executed. 264

1586. 28 Eliz. *Scots, Mary* Queen of, --- for a Conspiracy against Queen *Elizabeth*. Beheaded. 27

1660. 12Car. II. *Scroop, Adrian*, a Regicide, -- for High Treason. Executed. 262

1679. 31Car. II. *Scroggs*, Sir *William*, Lord Chief Justice of the *King's-Bench*, Articles of High Misdemeanors against him. Resigns thereupon, and has a Pension. 382

1629. 5 Car. I. *Selden, John*, Esq; Proceedings against him, on his bringing a Writ of *Habeas Corpus*, to be bailed in the *King's-Bench*. 93

1662. 14Car. II. *Sellers, John*, tried for High Treason. Pardoned. 289

1549. 2 & 3 Ed. VI. *Seymour, Thomas* Lord, the Attainder of him, for High Treason. Beheaded. 11

1677. 29Car. II. *Shaftesbury, Anthony* Earl of, his Case on a Writ of a *Habeas Corpus*. 317

1681. 33Car. II. *Shaftesbury, Anthony* Earl of (the same) Proceedings against him for High Treason. *Ignoramus*. 432

1686. 2 Jac. II. *Sharp, John*, D. D. suspended and restored. 564

1668. 20Car. II. *Sharpless, John*, tried for High Treason. Acquitted. 302

1632. 8 Car. I. *Sherfield, Henry*, Esq; --- for breaking a painted Church-Window. Fined 500 *l*. 121

1675. 27Car. II. *Shirley*, Dr. *Thomas*, Proceedings of both Houses of Parliament in the Case between him and Sir *Robert Fagg*. 315

1683. 35Car. II. *Shute, Samuel*, Sheriff of *London*, tried for a Riot, &c. Fined 1000 Marks. 445

1683. 35Car. II. *Sidney, Algernon*, Esq; for High Treason. Beheaded. 470

1656. 8 Car. II. *Sindercome, Miles*, --- for High Treason against *Oliver Cromwell*. Condemned. Found dead in his Bed. 254

1658. 10Car. II. *Slingsby*, Sir *Henry*, Knt. --- for a pretended High Treason. Beheaded. 259

1679. 31Car. II. *Smith, Francis*, Bookseller, -- for publishing a Libel. Fined a small Sum. 376

1660. 12Car. II. *Smith, Henry*, a Regicide, for High Treason. Reprieved. 272

1647. 23 Car. I. *Smith, Isabel*, prosecuted for Forgery. Fined 200 *l*. 222

1674. 26Car. II. *Soame*, Sir *William*, Knt. at the Suit of Sir *Samuel Barnardiston*, Bart. for a double Return. 308

1701. 13W. III. *Somers, John* Lord, impeached of High Crimes and Misdemeanors. Acquitted. 739

1550. 3 & 4 Ed. VI. *Somerset, Edward* Duke of, Proceedings against him, for High Treason and other Misdemeanors. Fined (by Act of Parliament) 2000 *l. per Annum*. Pardoned, and his Estate restored. 114

1551. 5 Ed. VI. *Somerset, Edward* Duke of, (the same) -- for High Treason and Felony. Beheaded. 16

1616. 14 Jac. I. *Somerset, Robert Carr* Earl of, --- for the Murder of Sir *Thomas Overbury*. Pardoned. 62

1616. 14 Jac. I. *Somerset, Frances* Countess of, -- for the Murder of Sir *Thomas Overbury*. Pardoned. 61

1600. 43 Eliz. *Southampton, Henry* Earl of, --- for High Treason. Reprieved. 42

1696. 8 W. III. *Sparkes, John*, --- for Piracy. Executed. 705

1633. 9 Car. I. *Sparkes, Michael*, --- for printing a Libel. Fined 500 *l*. 124

1683. 36Car. II. *Speke Hugh*, Gent. --- for a Misdemeanor. 477

1645. 21 Car. I. *Spotswood*, Sir *Robert*, --- for pretended Treasons, in *Scotland*. Beheaded. 885

1692. 4W. & M. *Sprat, Thomas*, D. D. Bishop of *Rochester*, Proceedings against him before the Lords of the Privy Council, for a pretended Plot. 638

1608. 6 Jac. I. *Sprot, George*, tried for High Treason. Executed. 55

1702. 1 Annæ. *Spurr, John*, --- for assisting in a forcible Marriage. Acquitted. 749

1680. 32Car. II. *Stafford, William* Viscount, -- for High Treason. Beheaded. 391

1678. 30Car. II. *Staley, William*, Goldsmith, --- for High Treason. Executed. 322

1688. 4 Jac. II. *Stansfield, Philip*, Gent. --- for High Treason, and Parricide. Executed. 600

1681. 33Car. II. *Stapleton*, Sir *Miles*, Bart. -- for High Treason. Acquitted. 417

1679. 31Car. II. *Starkey, Henry*, a *Romish* Priest, -- for High Treason. Reprieved. 369

Stedman. See *Moders*.

1681. 34Car. II. *Stern, John*, tried for the Murder of *Thomas Thynn*, Esq; Executed. 439

1699. 11W. III. *Stevens, Ellis*, Gent. --- for the Murder of Mrs. *Sarah Stout*. Acquitted. 709

1708. 7 Annæ. *Stirling, James*, Laird of *Keir*, and others, -- for High Treason. Acquitted. 806

1640. 16Car. II. *Strafford, Thomas* Earl of, --- for High Treason. Beheaded. 162

1653. 5 Car. II. *Streater*, Captain *John*, Proceedings on a *Habeas Corpus*, brought by him. Discharged. 246

1629. 5 Car. I. *Stroud, William*, Esq; Poceedings against him, on bringing his Writ of *Habeas Corpus* to be bailed in the *King's-Bench*. 93

1662. 14Car. II. *Stubbs, Francis*, tried for High Treason. Executed. 289

1388. 11Ric. II. *Suffolk, Michael de la Pole* Earl of, --- for High Treason. He fled. 1

1702. 1 Annæ. *Swendsen, Haagen*, -- for Felony, by a forcible Marriage. Executed. 749

1683. 35Car. II. *Swinnock, Samuel*, -- for a Riot. Fined 500 Marks. 445

T

1679. 31Car. II. *Tasborough, John*, Gent. tried for Subornation of Perjury. Fined 100 *l*. 372

1660. 12Car. II. *Temple, James*, a Regicide, --- for High Treason. Reprieved. 273

1660. 12Car. II. *Temple, Peter*, a Regicide, --- for High Treason. Reprieved. 273

1682. 34Car. II. *Thompson, Nathaniel*, --- for Libels. Pilloried, and fined 100 *l*. 442

1680. 32Car. II. *Thompson, Richard*, Clerk, Proceedings against him, for seditious Sermons. Bailed, and soon discharged. 403

1407. 8Hen. IV. *Thorpe, William*, Priest, tried for Heresy. Imprisoned. 8

1554. 1 Mar. *Throckmorton*, Sir *Nicholas*, Knt. --- for High Treason. Acquitted. 19

1680. 32Car. II. *Thwing, Thomas*, --- for High Treason. Executed. 389

1586. 28 Eliz. *Tilney, Charles*, --- for High Treason. Executed. 26

1586. 28 Eliz. *Titchburn, Chidiock*, --- for High Treason. Executed. 26

1660. 12Car. II. *Titchburn, Robert*, a Regicide, -- for High Treason. Reprieved. 272

1702. 2 Annæ. *Toland, John*, Resolution of the House of Peers, upon a Pamphlet of his. 767

1662. 14Car. II. *Tonge, Thomas*, tried for High Treason. Executed. 289

1721. 8 Geo. I. *Tranter, Robert*, --- for the Murder of *Edward Lutterell*, Esq; Found guilty of Manslaughter. 865

1686. 28 Eliz. *Travers, John*, -- for High Treason. Executed. 26

1688. 4 Jac. II. *Trelawney*, Sir *Jonathan*, Bart. Bishop of *Bristol*, -- for a Libel. Acquitted. 574

1388. 11Ric. II. *Tresilian, Robert*, Lord Chief Justice of *England*, --- for High Treason. Executed. 1

1615. 13 Jac. I. *Turner, Anne*, Widow, --- for the Murder of Sir *Thomas Overbury*. Executed. 59

1679. 31Car. II. *Turner, Anthony*, a *Romish* Priest, -- for High Treason. Executed. 346

1688. 4 Jac. II. *Turner, Francis*, D. D. Bishop of *Ely*, -- for a Libel. Acquitted. 574

1663. 13Car. II. *Turner*, Col. *James*, --- for Felony and Burglary. Executed. 292

1663. 15Car. II. *Turner, John, Ely, Mary*, and *William*, -- for the same Felony and Burglary. Acquitted. 292

1704. 3 Annæ. *Tutchin, John*, --- for a seditious Libel. The Trial quashed. 793

1663-4. 15Car. II. *Twynne, John*, Printer, -- for High Treason. Executed. 293

V

1629. 5 Car. I. *Valentine, Benjamin*, Esq; Proceedings against him, for seditious Words in Parliament, and an Assault upon the Speaker. 100

1662. 14Car. II. *Vane*, Sir *Henry*, Knt. tried for High Treason. Beheaded. 284

1696. 8 W. III. *Vaughan*, Captain *Thomas*, -- for High Treason. Executed. 705

1631. 6 Car. I. *Uchiltrie, James* Lord, --- for Leasing-making, and Calumnies. Perpetual Imprisonment. 112

1590. 31 Eliz. *Udall, John*, Clerk, -- for Felony. Pardoned. 36

Vere, Robert. See *Ireland*, (Duke of)

1701. 1 Annæ. *Vincent*, Captain *Samuel*, tried for Cowardice, &c. Condemned; but Execution suspended. 747

1654. 6 Car. II. *Vowell, Peter*, -- for Aigh Treason against *Oliver Cromwell*. Executed. 249

1684. 34Car. II. *Vratz, Christopher*, --- for the Murder of *Thomas Thynn*, Esq; Executed. 439

W

1701. 1 *Annæ.* *Wade*, Captain *Cooper*, tried for Cowardice, *&c.* Shot to Death. 747

1679. 31 *Car.* II. *Wakeman.* Sir *George*, Bart. --- for High Treaſon. Acquitted. 359

1683. 35 *Car.* II. *Walcot*, Captain *Thomas*, --- for High Treaſon. Executed. 451

1660. 12 *Car.* II. *Waller*, Sir *Hardreſs*, a Regicide, -- for High Treaſon. Reprieved. 273

1660. 12 *Car.* II. *Wallop*, --- drawn on a Sledge to *Tyburn*, and his Eſtate confiſcated. 274

1688. 4 *Jac.* II. *Walters*, *Rowland*, Gent. --- for the Murder of Sir *Charles Pym*. Found guilty of Manſlaughter. 600

1683. 35 *Car.* II. *Ward*, Sir *Patience*, -- for Perjury. He abſconded. 446

1699. 11 *W.* III. *Warwick* and *Holland*, *Edward* Earl of, and others, --- for the Murder of Captain *Richard Coote*. Found guilty of Manſlaughter. 709

1603. 1 *Jac.* I. *Watſon*, *William*, Prieſt, --- for High Treaſon. Executed. 45

1660. 12 *Car.* II. *Wayte*, *Thomas*, a Regicide, --- for High Treaſon. Reprieved. 273

1702. 2 *Annæ.* *Welling*, *Thomas* and *Elizabeth*, -- for a Riot and Aſſault. Convicted. 765

1615. 13 *Jac.* I. *Wentworth*, Sir *John*, Proceedings againſt him for traducing Publick Juſtice. Fined 1000 Marks, and impriſoned. 884

1615. 13 *Jac.* I. *Weſton*, *Richard*, tried for the Murder of Sir *Thomas Overbury*. 58

1637. 13 *Car.* I. *Wharton*, *John*, --- for publiſhing ſeditious Books. Fined. 156

1688. 4 *Jac.* II. *White*, *Thomas*, D. D. Biſhop of *Peterborough*, --- for a Libel. Acquitted. 574

1678. 30 *Car.* II. *White*, alias *Whitebread*, *Thomas*, --- for High Treaſon. Reſerved for another Trial. 346

1679. 31 *Car.* II. *White*, alias *Whitebread*, *Thomas*, (the ſame) -- for High Treaſon. Executed. 346

1554. 1 *Mar.* *Wiat*, Sir *Thomas*, arraigned for High Treaſon. Beheaded. 883

1683. 36 *Car.* II. *Wickham*, *John*, --- for a Riot, *&c.* Fined 100 Marks. 445

1589. 31 *Eliz.* *Wickſtone*, Mr. and his Wife, --- for Libels. Mr. *W.* fined 500 Marks, Mrs. *W.* 1000 *l.* and both impriſoned. 34

1715. 2 *Geo.* I. *Widdrington*, *William* Lord, --- for High Treaſon. Pardoned. 851

1668. 20 *Car.* II. *Wilks*, *William*, --- for High Treaſon. Acquitted. 302

1710. 9 *Annæ.* *Willis*, *Francis*, ---for High Treaſon. Acquitted. 842

1702. 2 *Annæ.* *Willcughby*, *Elizabeth*, --- for a Riot and Aſſault. Convicted. 765

1605. 3 *Jac.* I. *Winter*, *Robert*, --- for High Treaſon. Executed. 54

1605. 3 *Jac.* I. *Winter*, *Thomas*, ---for High Treaſon Executed. 54

1715. 2 *Geo.* I. *Wintoun*, *George* Earl of, --- for High Treaſon. Reprieved. 853

1721. 8 *Geo.* I. *Woodburne*, *John*, --- for Felony, in maiming Mr. *Criſpe*. Executed. 866

1668. 20 *Car.* II. *Woodward*, *Richard*, --- for High Treaſon. Acquitted. 302

Worceſter, Biſhop of. See *Lloyd*.

1618. 16 *Jac.* I. *Wraynham*, ---, tried for ſlandering the Lord Chancellor *Bacon*. Cenſured. 67

Y

1684. 36 *Car.* II. *York*, *James* Duke of, the Execution of a Writ of Enquiry between His Royal Highneſs and *Titus Oates*. 511

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